Proceedings of June 24, 1970

Cross-Examination

By Mr. Allen:

Q Mr. Taylor, you mentioned a restrictive covenant with respect to the subdivision called Ginter Park; do you recall that? A Yes, sir.

Q Are you aware of the fact, sir, that the subdivision called Ginter Park, presently has Negroes residing therein? A Yes, sir.

Q Has any suit ever been brought to enforce any restrictive covenant or to collect on any Title policy because of this restrictive covenant? A Not that I know of.

Mr. Allen: Thank you, sir?

The Court: Mr. Gray? Mr. Battle? Excuse me.

Mr. Battle: No questions.

[840] Mr. Gray: One, Your Honor.

Cross-Examination

By Mr. Gray:

Q Mr. Taylor, prior to last November when you started taking the racial covenant out of the policy, prior to that time did you inquire as to the racial identity of the purchaser of a piece of property? A No, sir.

* * *

LETTER OF DISTRICT COURT DATED JULY 6, 1970

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari, Filed October 4, 1972, at pp. 81-85]

RICHMOND SCHOOL BOARD'S MOTION FOR JOINDER

Filed November 4, 1970

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

[Title Omitted in Printing]

Motion To Compel Joinder Of Parties Needed For Just Adjudication Under Rule 19

The School Board of the City of Richmond moves the Court for an Order requiring plaintiffs to serve and file an amended Complaint; making the following persons parties defendant herein; and directing that process be issued and served upon said parties at the addresses listed in Appendix A attached hereto: Waldo G. Miles, Mrs. Catherine Hook, Dr. Harold Ramsey, Hilary H. Jones, Jr., Thomas C. Boushall, Dr. Robert E. R. Huntley and Preston C. Caruthers, as members of the State Board of Education; Dr. Woodrow W. Wilkerson, State Superintendent of Public Instruction; S. Cecil Childress, Oliver J. Sand, Jr., Mrs. John L. Deusebio, Cecil F. Jones, Rev. Walter C. Whitt and Mrs. W. B. McMullin, as members of the School Board of Henrico County, Virginia; Linwood E. Toombs, L. R. Shadwell, Edwin H. Ragsdale, Anthony P. Mehfoud and C. Kemper Lorraine, as members of the Board of Supervisors of the County of Henrico, Virginia; G. L. Crump, C. C. Wells, R. P. Eagles, J. W. Russell, C. D. Spencer and C. E. Curtis, Jr., as members of the School Board of the County of Chesterfield, Virginia; Irving G. Horner, H. O. Browning, C. J. Purdy, F. F. Dietsch, A. R. Martin and J. Ruffin Apperson, as members of the Board of Supervisors of Chesterfield County, Virginia.

All of the individuals listed above are citizens and residents of the Commonwealth of Virginia, are subject to the jurisdiction of this court as to service of process and can be made parties defendant herein without depriving the court of jurisdiction.

As its ground therefor, the School Board of the City of Richmond shows the following:

1. This is a class action wherein the plaintiffs in the exercise of their rights under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States are seeking the disestablishment of a dual system of racially segregated public schools and the opportunity to participate in a unitary system of public schools.

2. As of September 25, 1970, the public school system of the City of Richmond was comprised of 48,013 students with an over-all racial mix of 64 per cent black and 36 per cent white.

3. For the school year 1969-70, the County of Henrico, which is contiguous to the City of Richmond at all points north of the James River, had approximately 33,600 students within its separate system of public schools with a racial mix of approximately 7 per cent black and 93 per cent white. Said County for many years has transported a substantial majority of its students to and from schools and maintains and operates its own extensive transportation system.

4. At the beginning of the school year 1969-70, the County of Chesterfield, which is contiguous to the City of Richmond at all points south of the James River, had approximately 31,400 students within its separate system of public schools with a racial mix of approximately 8 per cent

black and 92 per cent white. Following the annexation of a portion of the County of Chesterfield by the City of Richmond on January 1, 1970, the number of Chesterfield County students was approximately 22,000 students with approximately the same racial mix. Said County for many years has transported a substantial majority of its students to and from schools and maintains and operates its own extensive transportation system.

5. The combined public school enrollment of the City of Richmond and the Counties of Henrico and Chesterfield is approximately 108,000 and the over-all racial mix is approximately 33 per cent black and 67 per cent white.

6. The plaintiffs and all other residents of the City of Richmond and Counties of Henrico and Chesterfield have a substantial community of interest; and their lives and activities are interwoven economically, socially and politically. A great number of the residents of the Counties of Henrico and Chesterfield pursue their gainful occupation within the City of Richmond and many citizens of Richmond pursue their gainful occupation within the Counties of Henrico and Chesterfield. The City of Richmond and the Counties of Henrico and Chesterfield comprise one metropolitan area and one community.

There is considerable interdependence among the school systems of the City of Richmond and the Counties of Henrico and Chesterfield. The Richmond Technical Center, the Richmond Trades Training Center, the Cooperative Training Center, the Hickory Hill School for the mentally retarded and trainable children and John B. Cary Model School are owned and operated by the School Board of the City of Richmond but all said facilities serve the pupils of the City of Richmond and the Counties of Henrico and

Chesterfield. The Richmond Area Math-Science Center is jointly financed and operated by the School Boards of the City of Richmond, the Counties of Henrico and Chesterfield as well as certain other counties. A humanities center designed to serve the pupils of the City of Richmond and the Counties of Henrico and Chesterfield and other counties is in the planning stage. There is now a substantial interchange of students between Richmond and Chesterfield County pursuant to the annexation decree effective on January 1, 1970.

7. The racial mix in the Richmond public schools for 1960-61 school year was 56 per cent black and 44 per cent white. Immediately prior to the annexation of a portion of the County of Chesterfield on January 1, 1970, when Richmond was still operating under a freedom of choice plan, the racial mix in the Richmond public schools was 71 per cent black and 29 per cent white. Due to the high proportion of whites in the annexed area, the projected racial mix in the Richmond public schools for the 1970-71 school year following annexation was 60 per cent black and 40 per cent white. The actual racial mix in the Richmond public schools is now 64 per cent black and 36 per cent white, which figures reflect a loss of approximately 3,500 white students and a gain of approximately 1,300 black students to the Richmond system when compared with projected enrollment for the 1970-71 year.

8. There is an established trend toward the resegregation of the Richmond public school system caused in large part by the movement of white families from Richmond to the Counties of Henrico and Chesterfield. It can be reasonably anticipated that this established trend will be greatly accelerated as a direct result of the plan now being

implemented within the city limits of Richmond by order of this Court. This accelerated resegregation will lead to the frustration of any unitary plan developed solely with reference to the City of Richmond, and the plaintiffs and others similarly situated will be unable to obtain complete and effective relief in this cause unless they are included within a unitary plan encompassing the City of Richmond and the Counties of Henrico and Chesterfield.

9. Under the equal protection clause of the Fourteenth Amendment, the plaintiffs and all other Richmond school children are entitled to the opportunity to participate in a unitary public school system which reasonably reflects the racial composition of the City of Richmond and the Counties of Henrico and Chesterfield, the community in which they live. The plan now being implemented by order of the Court is confined to the city limits of Richmond and does not reflect the racial composition of the community. The plaintiffs and other Richmond school children will be unable to obtain complete and effective relief in this cause unless this Court orders into effect a unitary plan encompassing the City of Richmond and the Counties of Henrico and Chesterfield.

10. The general supervision of the Virginia system of public free schools is vested in the State Board of Education, pursuant to Section 130 of the Constitution of Virginia and Section 22-11 of the Code of Virginia. The State Board of Education has the power, within its sole discretion, to establish appropriate school divisions and to consolidate existing school divisions, by virtue of Sections 129, 132 and 133 of the Constitution and Sections 22-30 and 22-100.1 of the Code. Where the State Board of Education creates a school division comprised of more than one city or county, Section

133 of the Constitution provides that such a division will be supervised by the school board of the cities and counties comprising the division, and that a division superintendent must be appointed by joint action of such school boards.

Additionally, under Section 133 of the Constitution and Sections 22-100.1 to 22-100.12 of the Code, the local school boards within a division may be abolished and a division school board created by joint action of the State Board of Education and the school boards and governing bodies of each city and county in the division.

11. The State Board of Education has an affirmative duty to use reasonable means to assist in the complete and effective establishment of a unitary school system in the City of Richmond. The Constitution and statutes of Virginia provide the State Board of Education with a practical, reasonable and educationally sound method of fulfilling this affirmative duty through its power to consolidate the City of Richmond and Counties of Henrico and Chesterfield into one school division to be supervised jointly by the three school boards within the division. The creation of such a consolidated school division will substantially diminish the effect of the established trend toward resegregation within the Richmond school system, and will thus make possible the maintenance of an effective unitary system of public schools. In the absence of such action by the State Board of Education, the plaintiffs and others similarly situated will be denied their constitutional right to a complete and effective unitary plan in the City of Richmond. The presence of the State Board of Education before the Court is necessary to assure that such action will be taken and in their absence complete relief cannot be accorded among those already parties to this cause.

12. If the public schools of Richmond and the Counties of Chesterfield and Henrico are consolidated into one school division as suggested herein, the School Board of Henrico County and the School Board of Chesterfield County must participate with the School Board of the City of Richmond in formulating a unitary plan for the consolidated division and in appointing a division superintendent. Accordingly, in their absence complete relief cannot be accorded among those already parties to this cause.

13. The Board of Supervisors of Henrico County and the Board of Supervisors of Chesterfield County must appropriate public funds to operate a portion of the schools for the consolidated school division suggested herein. Accordingly, in their absence complete relief cannot be accorded among those already parties to this cause.

14. Dr. Woodrow W. Wilkerson, State Superintendent of Public Instruction, would have certain executive and administrative duties along with the State Board of Education in the formation and administration of the consolidated school division suggested herein. Accordingly, in his absence complete relief cannot be accorded among those already parties to this action.

15. Should this Court decide that the statutory method of abolishing the local school boards and establishing a division school board must be pursued for the consolidated school division suggested herein, then the participation of the School Boards and Boards of Supervisors of Henrico and Chesterfield and the State Board of Education would be essential for this purpose as well.

16. The School Board of the City of Richmond is preparing a community-wide unitary plan for the City of Rich-

mond and the Counties of Henrico and Chesterfield and such a plan will be timely submitted.

The School Board Of The City Of Richmond, Virginia

By /s/ George B. Little
Of Counsel

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[Appendix "A," Memorandum, Order and Certificate of Service Omitted on Printing]

* * *

OPINION AND ORDER OF UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF VIRGINIA, C.A. NO. 3353, REGARDING JOINDER OF ADDITIONAL PARTIES DATED DECEMBER 5, 1970

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at pp. 48-57]

* * *

AMENDED COMPLAINT

Filed December 14, 1970

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

[Title Omitted in Printing]

1. Plaintiffs adopt and reallege paragraphs 1 through 17, inclusive, of their original Complaint as paragraphs 1 through 17, inclusive, of this Amended Complaint, with the same force and effect as though they were set out in their entirety herein.

18. Plaintiffs adopt and reallege the material allegations of the Motion to Compel Joinder of Parties Needed for Just Adjudication Under Rule 19 filed herein on or about November 4, 1970, as follows:

> the allegations of paragraphs 1 through 7, inclusive, paragraph 10 and paragraphs 12 through 15, inclusive;
>
> the allegation contained in paragraph 9 that the "plan of desegregation" presently being implemented within the City of Richmond pursuant to the order of the district court does not meet Constitutional requirements; and
>
> the allegation contained in paragraph 11 that the defendant Virginia State Board of Education owes an affirmative obligation to plaintiffs and the class on whose behalf plaintiffs sue to establish and maintain a unitary public school system for the education of minor plaintiffs and the class.

19. Defendants Virginia State Board Of Education, School Board Of Henrico County, Board Of Supervisors Of Henrico County, School Board Of Chesterfield County and

Board Of Supervisors Of Chesterfield County are public bodies corporate established and maintained pursuant to the Constitution and laws of the Commonwealth of Virginia as administrative departments of the Commonwealth and discharge governmental functions.

20. Defendant Virginia State Board Of Education establishes policies, practices, customs and usages which are generally applicable to the conduct of the free public school system of the Commonwealth of Virginia. In particular, defendant Virginia State Board Of Education has the power, within its discretion, to establish school divisions and to consolidate existing school divisions. Defendant Virginia State Board Of Educaton is charged with the affirmative Constitutional duty to exercise its powers so as to afford equal educational opportunities to plaintiffs and the class on whose behalf plaintiffs sue.

21. Defendant Board Of Supervisors Of Henrico County has the duty of levying taxes, approving and selling bonds for capital improvements to be utilized by the defendant School Board Of Henrico County; the Board Of Supervisors Of Henrico County approves all budgets and appropriates funds necessary to operate the public school system of Henrico County.

22. Defendant Board Of Supervisors Of Chesterfield County has the duty of levying taxes, approving and selling bonds for capital improvements to be utilized by the defendant School Board Of Chesterfield County; the Board Of Supervisors Of Chesterfield County approves all budgets and appropriates funds necessary to operate the public school system of Chesterfield County.

23. Defendant Woodrow W. Wilkerson, Virginia State Superintendent Of Public Instruction, holds office pursuant

to the Constitution and laws of the Commonwealth of Virginia as the chief administrative officers of the public free school system of Virginia. He is under the authority, supervision and control of, and acts pursuant to the orders, policies, practices, customs and usages of the defendant Virginia State Board Of Education.

24. Defendants Dr. Walter Campbell and Dr. Robert F. Kelly each hold office pursuant to the Constitution and laws of the Commonwealth of Virginia as administrative officers of the public free school system of Virginia. They are under the authority, supervision and control of, and to a material degree act pursuant to the orders, policies, practices, customs and usages of both the Virginia State Board Of Education and, respectively, The School Board Of Henrico County and The School Board of Chesterfield County.

25. Defendant School Board Of The City Of Richmond and defendant Lucien D. Adams, successor to H. I. Willett as Superintendent Of Schools Of The City Of Richmond are under the authority, supervision and control of, and to a material degree act pursuant to the orders, policies, practices, customs and usages of The Virginia State Board Of Education.

26. The Commonwealth of Virginia, through its Constitution and laws, the customs, policies, and practices of its legislative, administrative and judicial branches, has enforced and mandated both public and private segregation, the effects of which persist in the affairs of the defendants and which result in deprivation of the Constitutional rights of plaintiffs and the class on whose behalf plaintiffs sue.

27. The Commonwealth of Virginia [hereinafter "State"], acting through its constitution and laws, the customs, usages,

policies and practices of its legislative, administrative and judicial branches, assisted in and encouraged the establishment and maintenance of a segregated society in the Commonwealth of Virginia, exemplified by, among other manifestations, the following:

a) State-mandated dual, biracial public schools;

b) Segregated public facilities;

c) State-mandated segregated public accommodations, public and private transportation, public and private housing;

d) State-enforced segregation in public employment, including hiring, firing, and terms and conditions of employment;

e) State-encouraged discrimination in private employment, including hiring, firing, and terms and conditions of employment;

f) State-mandated discrimination in the allocation of State and municipal resources and services, and financial assistance programs;

g) State-mandated racial discrimination in the application of voting qualifications;

h) State-enforced racial limitations upon education, marriage, commerce and recreation of black citizens;

all of which has had and continues to have the purpose and effect of denying equal educational opportunities, and equal opportunities based on education, to black citizens and students by compelling the attendance of black students in segregated schools, and which denies to plaintiffs and the class on whose behalf they sue, the equal protection of the laws guaranteed them by the Fourteenth Amendment.

28. Through its various instrumentalities, including but not limited to zoning boards, planning commissions and departments, licensing agencies, State-approved realtor organizations, public housing and urban renewal authorities, the defendants herein, and others, and by various methods, including but not limited to State laws or local ordinances prescribing minimum lot sizes and conditioning the construction of publicly-assisted housing facilities, the location of parks and highways, the enforcement of racially restrictive covenants, and others, and pursuant to a policy of racial discrimination, the State and other defendants have established a pattern, practice, custom and usage of racial containment of blacks to prescribed residential areas, with the effect that the Counties of Henrico and Chesterfield have populations whose respective racial compositions are approximately 5% black and school populations approximately 7% black and 8% black whereas the City of Richmond has a population approximately 50% black and a school population approximately 64% black.

29. Since 1954, the State (acting by and through its various instrumentalities), pursuant to a policy, practice, custom and usage of racial discrimination denying Fourteenth Amendment rights, has by the devices of school closings, defiance of the orders of federal courts, Acts of the General Assembly, creation of the Pupil Placement Board for the initial assignment of all children to all schools within the Commonwealth of Virginia, among others, acted affirmatively to deny black children equal educational opportunities by the maintenance of a pattern of segregated schools, and has failed to fulfill its affirmative duty to establish and maintain unitary public schools.

30. Defendants, individually and acting in concert, have created, established, supported and maintained and continue to support and maintain a dual biracial school system in the City of Richmond and the Counties of Henrico and Chesterfield.

31. The State, and particularly the defendants Virginia State Board Of Education and State Superintendent Of Public Instruction [hereinafter, "State defendants"] have approved or recommended school sites, school expansions and supported other aspects of the location and expansion of public educational facilities in the City of Richmond and the Counties of Henrico and Chesterfield, pursuant to a policy, pattern, practice, custom and usage of racial discrimination. Said pattern and practice of such approvals, recommendations and site selections continues as of the date of this Amended Complaint.

32. The State and the other defendants have allocated and permitted to be allocated resources, and distributed and permitted to be distributed State appropriations for public education, in such a manner as to establish and maintain the pattern of racial separation in the public schools of the City of Richmond and the Counties of Henrico and Chesterfield as described herein.

33. The defendants have provided substantial funds to assist in the transportation of pupils in the Counties of Henrico and Chesterfield but have failed to provide a similar quantity of publicly-supported pupil transportation in the City of Richmond, which policy, practice, custom and usage has assisted in the maintenance of the pattern of racial separation in the public schools of the City of Richmond and the Counties of Henrico and Chesterfield.

34. The State defendants have exercised their powers to require and/or approve interdistrict contractual arrangements with the purpose and effect of maintaining racial segregation and have directly supported, with State funds for pupil transportation, etc., interdistrict contractual arrangements having such effect, but have failed to exercise their powers to carry out their affirmative duty to establish and maintain unitary schools.

35. The State defendants have approved a pattern of school construction in the County of Henrico around the perimeter of the defendant City of Richmond which results in the establishment of large school complexes having an overwhelmingly white enrollment which provide a school house for white students to the exclusion of black students, and facilitate the maintenance of the pattern of racial separation in the public schools of the City of Richmond and the Counties of Henrico and Chesterfield as described herein.

36. The State defendants have approved a similar pattern of school site location, construction and expansion of facilities in Chesterfield County which has the like effect of maintaining the pattern and practice of racial separation in the public schools of the City of Richmond and the Counties of Henrico and Chesterfield.

37. There exist schools in the defendant Richmond school system and in the defendant Henrico County and Chesterfield County school systems which are in closer proximity to students of one of the other systems than the schools to which said students are presently assigned. The defendants and some of them have in the past resisted proposals to annex additional territory to the City of Richmond at least in part upon racial grounds. The failure of the State

defendants to exercise their governmental powers to eliminate the pattern of racial containment in the public schools of the defendant school systems by requiring, where appropriate, student exchanges by contractual agreement, consolidation or merger, has the effect of perpetuating the State-imposed dual school system described herein in derogation of the affirmative obligation of State defendants as described herein.

38. The defendant school systems operate joint programs of public instruction funded and approved by the State defendants which cross political boundaries for the purpose of achieving educational goals within the single community composed of the City of Richmond and the Counties of Henrico and Chesterfield, just as the defendants Board Of Supervisors Of Henrico County, Board Of Supervisors Of Chesterfield County, City Of Richmond and City Council Of Richmond have operated and participated jointly in various municipal activities and programs which cross their respective political boundaries. The present boundaries of the defendant school systems bear no reasonable relation to *bona fide* educational goals, policies and practices. Said boundaries have the effect of excluding black children from the educational resources and facilities which would otherwise be available to them but for the continued maintenance by the defendants, despite the availability of other methods of school organization, of said school district boundaries.

39. The present boundaries of the defendant school systems serve no *bona fide* educational goals, policies or practices which could not be served equally well by district configurations which do not result in the pattern of racial separation in the public schools of the City of Richmond

and the Counties of Henrico and Chesterfield described herein.

40. Maintenance of the present school district boundaries has the effect of denying black children their Fourteenth Amendment right to equal educational opportunities and is supported by no compelling State interest in their continuation.

41. There exist reasonably available alternative methods of school organization and operation within the Counties of Henrico and Chesterfield and the City of Richmond which would eliminate the pattern and effect of the denials of equal educational opportunities described herein and which would maintain, now and hereafter, only unitary schools.

42. The continued operation by defendants of discrete school districts and patterns of pupil assignment as described herein results in the effective exclusion of black students from certain schools and in the denial of equal educational opportunities to black students.

WHEREFORE, plaintiffs respectfully pray that this Court enter its Order requiring all defendants, jointly and severally, to take all necessary action to require forthwith the consolidation or merger of the defendant school systems in all aspects of school operation and administration, including but not limited to, the appointment of an Acting Superintendent to manage the consolidated systems, the merger of the existing boards of education pending the selection, by election, appointment or otherwise, of a new board of education representative of the consolidated systems; and further requiring that that board shall be the successor board of education to the defendants School Board Of The City Of Richmond, School Board Of Henrico County and

School Board Of Chesterfield County, assuming all rights, powers, responsibilities, duties and obligations presently held, in whole or in part, by the defendant school boards; and further requiring that each defendant shall by withholding funds or accreditation and by the exercise of any and all powers available to each, insure the full cooperation of the other defendants and the prompt accomplishment of said consolidation or merger.

In the alternative, plaintiffs pray that the Court require defendants Board Of Supervisors Of Henrico County, Board Of Supervisors Of Chesterfield County, City Council Of Richmond, School Board Of Henrico County, School Board Of Chesterfield County and School Board Of The City Of Richmond, acting by and through the State defendants, to enter into such agreements, contracts or otherwise to provide for the joint operation of the educational systems of the City of Richmond and the Counties of Henrico and Chesterfield, with free availability of all facilities for pupil attendance, and tri-system-wide assignment of pupils, teachers, school plant, transportation facilities and all other incidents of school operation, to the end that no school within the respective defendant school systems shall be racially identifiable.

Plaintiffs further pray that this Court require the defendants to prepare and submit for approval of the Court a plan for the operation of all of the public schools within the defendant school systems in conformity with the requirements of the Fourteenth Amendment, including but not limited to, the establishment of schools, pupil populations, staffs, faculties, transportation routes and extracurricular activities which are not racially identifiable, and to be effective with the commencement of the 1971-72 school year.

Plaintiffs further pray that this Court allow them their

costs herein, reasonable attorneys' fees from the inception of this cause, and incidental equitable damages for the denial by defendants, acting individually and in concert, of the rights guaranteed plaintiffs under the Fourteenth Amendment to the Constitution of the United States.

Plaintiffs further pray for such other, further or additional relief as to the Court may appear just and necessary.

/s/

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Attorneys for Plaintiffs

[Certificate of Service Omitted in Printing]

* * *

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, C.A. NO. 3353

DATED JANUARY 8, 1971

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at pp. 58-90]

* * *

ORDER OF UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF VIRGINIA, C.A. NO. 3353,

FILED JANUARY 13, 1971,

NUNC PRO TUNC, JANUARY 8, 1971

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at pp. 91-93]

* * *

OPINION AND ORDER OF UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF VIRGINIA, C.A. NO. 3353, DATED JANUARY 13, 1971

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at pp. 94-97]

* * *

ANSWER OF STATE BOARD OF EDUCATION AND SUPERINTENDENT OF PUBLIC INSTRUCTION

Filed January 15, 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

[Title Omitted in Printing]

Answer

Now come the defendants, Waldo G. Miles, Mrs. Catherine Hook, Dr. Harold Ramsey, Hilary H. Jones, Jr., Thomas C. Boushall, Preston C. Caruthers and Dr. Robert E. R. Huntley, members of the State Board of Education, and Dr. Woodrow W. Wilkerson, Superintendent of Public Instruction, who for their answer to the Amended Complaint herein say as follows:

First Defense

The Court is without jurisdiction to entertain the Amended Complaint, because the suit sought to be maintained thereby is, in its direct purpose and effect, a suit against the Commonwealth of Virginia, which has not consented to be sued, and the judicial power of the United States does not extend to such suit.

Second Defense

1. The defendants admit that the plaintiffs seek to invoke this Court's jurisdiction as set forth in Paragraph 1 of the Complaint, but expressly deny that this Court has jurisdiction of this cause.

2. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 2 and 3 of the Complaint and call for strict proof thereof.

3. The defendants deny the allegations contained in Paragraph 4 of the Complaint.

4. The defendants neither admit nor deny the allegations contained in Paragraphs 5, 6 and 7 of the Complaint, but say that the Constitution and Statutes of the State of Virginia speak for themselves.

5. The defendants deny the allegations contained in Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Complaint.

6. The defendants deny the allegations contained in Paragraph 1 of the Motion to Compel Joinder.

7. The defendants admit the allegations contained in Paragraphs 2, 3, 4 and 5 of the Motion to Compel Joinder.

8. The defendants admit the allegations contained in Paragraph 6 of the Motion to Compel Joinder that the Richmond Technical Center, the Richmond Trades Training Center, the Cooperative Training Center and the Hickory Hill School for the Mentally Retarded and Trainable Children are owned and operated by the School Board of the City of Richmond, and that said facilities serve the pupils of the City of Richmond and the Counties of Henrico and Chesterfield. The defendants deny that there is any interdependence among the school systems of the City of Richmond and the Counties of Henrico and Chesterfield, and that John B. Cary Model School serves the pupils of the Counties of Henrico and Chesterfield. The defendants say that the annexation decree effective on January 1, 1970, speaks for itself. The defendants are without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 6 of the Motion to Compel Joinder and call for strict proof thereof.

9. The defendants admit that the allegations contained in Paragraph 7 of the Motion to Compel Joinder that the racial mix in the Richmond public schools for the 1960-61 school year was 56% black and 44% white and that the racial mix in Richmond public schools is now 64% black and 36% white are substantially correct. The defendants are without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 7 of the Motion to Compel Joinder.

10. The defendants neither admit nor deny the allegations contained in Paragraph 10 of the Motion to Compel Joinder, but say that the Constitution and Statutes of the State of Virginia speak for themselves.

11. The defendants deny the allegations contained in Paragraphs 9, 11, 12, 13 and 14 of the Motion to Compel Joinder.

12. The defendants say that the allegations of Paragraph 15 of the Motion to Compel Joinder are not allegations of fact requiring an answer. They deny that this Court has jurisdiction to decide that the statutory method of abolishing the local school boards and establishing a division school board must be pursued.

13. The defendants say that Paragraphs 19, 20, 21, 22, 23, 24 and 25 of the Amended Complaint state conclusions of law not requiring an answer.

14. The defendants deny the allegations contained in Paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 of the Amended Complaint.

15. The defendants are without information or knowledge sufficient to form a belief as to the allegation contained in the first sentence of Paragraph 37 of the Amended Conplaint, and the defendants call for strict proof thereof. The defendants deny the remainder of the allegations contained in Paragraph 37 of the Amended Complaint.

16. The defendants admit the allegation contained in Paragraph 38 of the Amended Complaint that the defendant school systems operate joint programs of public instruction funded and approved by the State defendants which cross political boundaries for the purpose of achieving educational goals, but deny that Richmond, Henrico and Chesterfield compose a single community. The defendants are without information or knowledge sufficient to form a belief as to the allegations contained in Paragraph 38 of the Amended Complaint that the defendants, Board of Supervisors of Henrico County, Board of Supervisors of Chesterfield County, City of Richmond and City Council of Richmond, have operated and participated jointly in various municipal activities and programs which cross their respective political boundaries and call for strict proof thereof. The defendants deny the remaining allegations contained in Paragraph 37 of the Amended Complaint.

17. The defendants deny the allegations contained in Paragraphs 39, 40, 41 and 42 of the Amended Complaint.

Now having fully answered, these defendants pray to be hence dismissed with their costs in this behalf expended.

Waldo G. Miles
Mrs. Catherine Hook
Dr. Harold Ramsey
Hilary H. Jones, Jr.
Thomas C. Boushall
Preston C. Caruthers
Dr. Robert E. R. Huntley
State Board of Education

Dr. Woodrow W. Wilkerson
Superintendent of Public Instruction

By /s/ Andrew P. Miller
Counsel

Andrew P. Miller
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Assistant Attorneys General

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[Certificate of Service Omitted in Printing]

ANSWER OF BOARD OF SUPERVISORS OF CHESTERFIELD COUNTY

Filed January 15, 1971

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

[Title Omitted in Printing]

Answer Of The Board Of Supervisors Of Chesterfield County And The Individual Members Thereof To The Amended Complaint

For answer to the amended complaint filed herein, the Board of Supervisors of Chesterfield County and the individual members thereof state as follows:

1. They admit that the plaintiffs seek to invoke jurisdiction under Title 28, United States Code, Section 1331, and Section 1343, but they deny that this Court has jurisdiction of the matters set forth in the amended complaint under said sections. They deny that the matter in controversy exceeds ten thousand dollars.

2. They are without knowledge or information sufficient to form a belief as to the allegations of paragraphs 2 and 3 of the original complaint.

3. They admit that the plaintiffs purport to bring this action as a class action, but deny that the plaintiffs adequately represent all members of the class they purport to represent and deny that all members of the class seek the relief sought by the plaintiffs.

4. They admit the allegations of paragraph 5 of the original complaint.

5. They admit the allegations of paragraph 6 of the original complaint, except those alleging required action

by the School Board of the City of Richmond, which allegations of required action are denied.

6. They admit the allegations of paragraph 7 of the original complaint.

7. They deny the allegations of paragraphs 8, 9, 10, 11, 12, 13, and 14 of the original complaint.

8. They are without knowledge or information sufficient to form a belief as to the allegations of paragraph 15 of the original complaint.

9. They admit the allegations of paragraphs 15 and 16 of the original complaint that the refusal of the defendant School Board of the City of Richmond to grant the application of each of the plaintiffs for enrollment in the public school of their choice in the City of Richmond constitutes a deprivation of liberty without due process of law and a denial of the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States, and a denial of rights secured by Title 42, United States Code, Section 1981.

10. They deny the allegations of paragraph 17 of the original complaint.

11. They are without knowledge or information sufficient to form a belief as to the allegations of paragraphs 1, 2, 3, 4 and 5 of the Motion to Compel Joinder of Additional Parties.

12. They deny the allegations of the first paragraph of paragraph 6 of the Motion to Compel Joinder of Additional Parties except the allegations of the second sentence thereof, which are admitted.

They deny the allegations of the first sentence of the second paragraph of paragraph 6 of the Motion to Compel Joinder of Additional Parties. They admit the remainder of the allegations of said second paragraph of said paragraph 6.

13. They are without knowledge or information sufficient to form a belief as to the allegations of paragraph 7 of the Motion to Compel Joinder of Additional Parties.

14. The allegations of paragraph 10 of the Motion to Compel Joinder of Additional Parties are conclusions of law not requiring an answer. The statutory and Constitutional provisions referred to in said paragraph 10 speak for themselves.

15. They deny the allegations of paragraphs 9, 11, 12, 13 and 14 of the Motion to Compel Joinder of Additional Parties.

16. They state that the allegations of paragraph 15 of the Motion to Compel Joinder of Additional Parties are not allegations of fact requiring an answer. They deny that this Court has jurisdiction to decide that the statutory method of abolishing the local school boards and establishing a division school board must be pursued.

17. They deny all other allegations of paragraph 18 of the amended complaint.

18. The allegations of paragraphs 19, 20, 21, 22, 23, 24, and 25 of the amended complaint are conclusions of law not requiring an answer. The statutory and constitutional provisions referred to therein speak for themselves.

19. They deny the allegations of paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 of the amended complaint.

20. They admit the allegations of the first sentence of paragraph 37 of the amended complaint. They deny the remaining allegations of said paragraph 37.

21. They admit the allegations of the first sentence of paragraph 38 of the amended complaint, except that they deny that the City of Richmond and the counties of Chesterfield and Henrico constitute a single community. They deny the remaining allegations of said paragraph 38.

22. They deny the allegations of paragraphs 39, 40, 41 and 42 of the amended complaint.

23. They deny that the plaintiffs are entitled to the relief sought by the amended complaint.

WHEREFORE, these defendants pray that the amended complaint be dismissed and that they be dismissed as parties to this action. These defendants further pray that they be allowed their costs, reasonable attorney's fees included.

Board of Supervisors of Chesterfield
County and the Individual Members
Thereof.

By /s/ Walter E. Rogers
Of Counsel

Frederick T. Gray
Walter E. Rogers
Williams, Mullen & Christian
510 United Virginia Bank Building
Richmond, Virginia 23219

Oliver D. Rudy
Commonwealth Attorney of
Chesterfield County
Chesterfield, Virginia 23832

ANSWER OF SCHOOL BOARD OF CHESTERFIELD COUNTY, ET AL.

Filed January 15, 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

[Title Omitted in Printing]

Answer Of The School Board Of Chesterfield County And Its Members, And Robert F. Kelley, Superintendent Of Schools Of Chesterfield County

First Defense

These defendants are improperly joined as parties defendant in this action under Rule 19.

Second Defense

Service is insufficient under Rule 4(d), the original complaint and the Motion to Compel Joinder under Rule 19 never having been served on these defendants and being adopted by reference as a part of the Amended Complaint. These defendants move that the Amended Complaint be dismissed as to them.

Third Defense

The Amended Complaint fails to state a claim upon which relief can be granted.

Answer to Amended Complaint

1 through 18. These defendants do not have sufficient information to answer Paragraphs 1-18 of the Amended Complaint.

19 through 25. These paragraphs are a recitation of conclusions of state law which these defendants neither deny nor affirm. Said laws speak for themselves.

26 through 36. It is denied that past history of racial separation in Virginia is relevant to any issue in this case or to the Constitutional rights of the plaintiffs. In so far [*sic*] as the allegations of these paragraphs apply to these defendants, they are denied.

37. The first sentence of Paragraph 37 is not denied. The remaining allegations of said paragraph are denied.

38. It is not denied that certain special educational programs are participated in by these defendants, along with Henrico County and the City of Richmond. All other allegations of said paragraph are denied.

39 through 42. The allegations are denied.

These defendants deny that the plaintiffs are entitled to the relief prayed for.

The School Board of Chesterfield County:

G. L. Crump
C. C. Wells
R. P. Eagles
J. W. Russell
C. D. Spencer
C. E. Curtis, Jr.,

Members of the School Board of Chesterfield County, and Robert F. Kelley, Superintendent of Schools of Chesterfield County

By: /s/ J. Segar Gravatt
Special Counsel

J. Segar Gravatt
105 East Elm Street
Blackstone, Virginia 23824

[Certificate of Service Omitted in Printing]

ANSWER OF BOARD OF SUPERVISORS AND SCHOOL BOARD OF HENRICO COUNTY, ET AL.

Filed January 15, 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

[Title Omitted in Printing]

Answer Of The School Board Of Henrico County, The Board Of Supervisors Of Henrico County, The Individual Members Thereof, And The Division Superintendent Of Schools Of Henrico County

Now come the defendants School Board of Henrico County, the Board of Supervisors of Henrico County, the individual members thereof, and the Division Superintendent of School of Henrico County, and answer the Amended Complaint filed against them herein and say:

1. These defendants admit that plaintiffs seek to invoke the jurisdiction of the Court under the provisions of law set forth in Paragraph 1 of the Amended Complaint. These defendants deny that this Court has jurisdiction of this cause under any of the provisions of law specified in said paragraph.

2. These defendants neither admit nor deny the allegations of Paragraphs 2, 3, and 4 of the Amended Complaint and call for strict proof of the same.

3. These defendants neither admit nor deny the allegations of Paragraphs 5, 6 and 7 of the Amended Complaint, and say that the provisions of Virginia law specified in said paragraphs speak for themselves, and no further answer to the allegations of said paragraphs is required of these defendants.

4. The allegations of Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 are denied.

5. For answer to Paragraph 18 of the Amended Complaint, which makes reference to the allegations of the Motion to Compel Joinder of Parties Needed for Just Adjudication Under Rule 19, these defendants say:

(a) They neither admit nor deny the allegations of Paragraphs 1, 2, 4, 5, and 7 of said motion and call for strict proof of the same.

(b) The allegations of Paragraph 3 of said motion are admitted.

(c) For answer to Paragraph 6 of the motion, these defendants neither admit nor deny the allegations of the first and last sentences of said paragraph and call for strict proof of the same. The allegations of the third and fourth sentences of said paragraph are denied. The remaining allegations of said paragraph are admitted.

(d) For answer to Paragraph 10 of said motion, these defendants say that the provisions of Virginia law specified in said paragraph speak for themselves and no further answer to the allegations of said paragraph are required of these defendants.

(e) The allegations of Paragraphs 9, 11, 12, 13 and 14 of said motion are denied.

(f) The allegations of Paragraph 15 of said motion are not allegations of fact requiring answer. These defendants deny that this Court has jurisdiction to decide that statutory method specified in said paragraph must be pursued.

6. For answer to Paragraphs 19, 20, 21, 22, 23, 24 and 25, these defendants say that the allegations of said paragraphs state conclusions of law, and no further answer to the allegations of said paragraphs is required.

7. The allegations of Paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 are denied.

8. These defendants neither admit nor deny the allegations of the first sentence of Paragraph 37 of the Amended Complaint, the remaining allegations of said Paragraph are denied.

9. The allegations of the first sentence of Paragraph 38 of the Amended Complaint are admitted, except the allegation that the City of Richmond and the Counties of Chesterfield and Henrico constitute a single community, which allegation is expressly denied. The remaining allegations of said paragraph are denied.

10. The allegations of Paragraphs 39, 40, 41 and 42 are denied.

Now, having fully answered, these defendants pray to be hence dismissed with their costs in this behalf expended.

County School Board of
Henrico County

Board of Supervisors of
Henrico County

By /s/ J. Mercer White, Jr.
Of Counsel

R. D. McIlwaine, III
P. O. Box 705
Petersburg, Virginia 23803

J. Mercer White, Jr., Esq.
County Attorney
County of Henrico
P. O. Box 27032
Richmond, Virginia 23261

[Certificate of Service Omitted in Printing]

REPORT OF SCHOOL BOARD OF CITY OF RICHMOND

Filed January 15, 1971

The Honorable Robert R. Merhige, Judge
District Court of the United States
Eastern District of Virginia
Post Office Building
Richmond, Virginia 23219

Re: Civil Action No. 3353

Dear Judge Merhige:

Pursuant to its Report of November 13, 1970, the School Board of the City of Richmond, by counsel, submits three new plans of operation for the Richmond Public Schools for the 1971-72 school year.

These plans are submitted without prejudice to the rights of the School Board to contest the validity and applicability of the specific guidelines set forth by the Court of Appeals for the Fourth Circuit in the Norfolk and Charlotte cases to the Richmond case and its right to re-examine its position in the event any of the guidelines is subsequently modified or held invalid. Neither should the submission of these plans be taken as a waiver of the position of the School Board that this Court erred in finding that the present plan was nonunitary and that the implementation of the plaintiffs' plan would meet the test of reasonableness as presently defined by the Fourth Circuit.

Furthermore, it should be pointed out that the School Board's three new plans are based upon the most likely alternatives and directives expected to be enunciated by the United States Supreme Court in its decisions in the *Swann* and other cases argued on October 12-14, 1970.

Under the basic organizational pattern for all three plans, the elementary level consists of Grades K through the 5th

Grade; the middle schools consists of Grades 6 through 8; and the high schools of Grades 9 through 12. The variations from this organizational concept are those necessitated either by the number of students involved or the availability of appropriate buildings.

Plan I is predicated on the concept of proximal geographic zoning for all three levels within the system. The basic criteria of this plan will be the proximity and accessibility of students to existing schools but with a view of integrating to the extent possible when proximal geographic zoning alone is used as a basic criteria.

In Plan II the elementary level assignments are based on proximal geographic zoning combined with pairing of contiguous school attendance areas. All middle and high schools are integrated to a substantial degree.

Plan III is submitted to cover the possibility that the United States Supreme Court will place an affirmative duty on every school board to implement a plan requiring a substantial degree of integration within every school in the system. This plan is an alternative to the plan as submitted by the plaintiffs in this case. Transportation details will be furnished to the Court no later than January 20, 1971.

If the School Board is required to implement elementary Plan III, it will recommend to the Richmond City Council the purchase of transportation equipment to enable the School Board to furnish the transportation required thereunder. The Court will recall that this record demonstrates that VTC would not be able to provide this additional transportation. Moreover, if these very young children are required to be transported, their safety and well-being could only be assured through the utilization of equipment over which the School Board has complete control.

Report of School Board of City Richmond

The School Board is currently in the process of completing attendance zone or line descripions for the elementary, middle and high schools, and will submit these exhibits forthwith.

Finally, I am enclosing a copy of Mr. L. D. Adams' letter to me of January 15, 1971, in the second paragraph of which he explains how arrangements were made to handle the elementary school students returning to the Richmond School System from Chesterfield at the beginning of the 1971-72 school session. The considerable overcrowding involved in making these arrangements makes it imperative that the injunction against construction be lifted at the earliest practicable date.

Respectfully submitted,

The School Board of the
City of Richmond

By /s/ George B. Little
Counsel

CC: All Counsel of Record

[Attached Letter of L. D. Adams Omitted in Printing]

OPINION AND ORDER OF UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF VIRGINIA, C.A. NO. 3353, DENYING MOTION TO REQUEST THE CONVENING OF A THREE-JUDGE COURT, DATED FEBRUARY 10, 1971

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at pp. 98-106]

OPINION AND ORDER OF UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF VIRGINIA, C.A. NO. 3353, DENYING MOTION TO DROP ADDITIONAL PARTIES IN THEIR INDIVIDUAL CAPACITIES

DATED FEBRUARY 10, 1971

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at pp. 107-09]

OPINION AND ORDER OF UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF VIRGINIA, C.A. NO. 3353, DATED APRIL 5, 1971

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at pp. 110-55]

PLAINTIFFS' ANSWERS TO INTERROGATORIES OF BOARD OF SUPERVISORS AND SCHOOL BOARD OF HENRICO COUNTY

Filed April 20, 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

[Title Omitted in Printing]

Answers To Interrogatories

* * *

18. What specific racial considerations entered into the establishment of the geographical boundary line of Henrico County?

Answer: Plaintiffs do not contend that the boundaries of the City of Richmond and the County of Henrico were originally established for a racial purpose. * * *

Respectfully submitted,

/s/ Norman J. Chachkin

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James M. Nabrit, III
Norman J. Chachkin
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Louis R. Lucas
525 Commerce Title Building
Memphis, Tennessee 38103

James R. Olphin
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Richmond, Virginia 23219

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420 North First Street
Richmond, Virginia 23219

Attorneys for Plaintiffs

[Jurat Omitted in Printing]

PLAINTIFFS' ANSWERS TO INTERROGATORIES OF SCHOOL BOARD OF CHESTERFIELD COUNTY

Filed April 20, 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

[Title Omitted in Printing]

Answers To Interrogatories

* * *

1. State in exactly what manner (as alleged in paragraph 26 of the Amended Complaint) "The Commonwealth of Virginia, through its Constitution and laws, the customs, policies and practices of its legislative, administrative and judicial branches" have caused the boundaries of the City of Richmond and County of Chesterfield to be established, "so as to mandate both public and private segregation" and to result in deprivation of the constitutional rights of plaintiffs and the class to which they belong.

Answer: Plaintiffs do not contend that the boundaries of the City of Richmond and the County of Chesterfield were originally established for a racial purpose. * * *

Respectfully submitted,

/s/ Norman J. Chachkin
Norman J. Chachkin
Jack Greenberg
James M. Nabrit, III
10 Columbus Circle
New York, New York 10019

Louis R. Lucas
525 Commerce Title Building
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Richmond, Virginia 23219

James R. Olphin
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Richmond, Virginia 23219

Attorneys for Plaintiffs

[Jurat Omitted in Printing]

[3] PROCEEDINGS

(April 23, 1971) (Friday at nine o'clock)

The Clerk: Civil Action 3353-R. Carolyn Bradley, et al., versus the School Board, City of Richmond, et al.

Mr. M. Ralph Page and James R. Olphin represent plaintiffs.

Mr. J. Segar Gravatt, Daniel Balfour, Fred T. Gray, Walter L. Rogers, John H. O'Brion, George B. Little, William G. Broaddus, Oliver Rudy and L. Paul Byrne represent the defendants.

* * *

[6] The Court:

* * *

[6] I also want to know, one, what is the contemplated time required to prepare a consolidated plan if consolidation is appropriate?

Now, I am talking to lawyers and not newspaper people. Newspaper people will have me deciding consolidation is appropriate. That is not what I am saying. I don't know whether it is or not. I just want to know how much time it will take if it becomes appropriate.

I want to know what difficulties will the school people have, the ones who are charged with the responsibility of operating the schools, if a decision in this case is delayed until school opening or a week or two weeks or three weeks after?

My initial feeling is that, and it is all subject to getting your views too at the appropriate time, but I think Alexander stands for what I said Green stood for back in 1968 when I said now means now.

I fell by the wayside to the blandishments of Mr. Gray who said now means get ready to go now, but it worked out. I am not unhappy about it at all, and grateful, as a matter of fact.

But the United States Supreme Court has said now and the Fourth Circuit has said now.

Now, that may or may not be a problem for the [7] school people, I don't know.

I think one thing we have to do is that there must be cooperation between the city and the counties in the interim. That is, the authorities. I think the city, Mr. Little, you have the facilities, you should make available—I am not going to order you to do anything, the counties, I am just suggesting you have the computers. I don't know whether the counties do or not, but you ought to make it available to them for anything they want.

You see, the thought occurs to me, gentlemen—let me strike that and say, if you recall I had said something about could we possibly try the substantive issue of consolidation and then the rest of it. Mr. Little at the time commented that he thought it was part and parcel, the way he was going to put on his case.

I have since come to the conclusion that it may be we have to hear it all together because the time, the effort, the money, all of this may be pertinent as to whether consolidation is required aside from just the plain legal rule, if there is a rule, and if there is it just hasn't been brought to my attention forcefully yet, but it may be.

That means, really, that it takes the cooperation of all the county people to say well, we want to get ready for the proposed plan in the event consolidation is ordered, as [8] well as the city.

District Court Proceedings of April 23, 1971

[9] * * *

Now, Mr. Little, I think one thing is important. You indicated the other day you already had a proposed plan, right?

[10] Mr. Little: Yes, sir.

The Court: I think you have got to give it to these gentlemen. I think they have got to have it. I think they have got to have it as quickly as possible.

Mr. Little: May I address myself to that point? Expecting trial on April 26th, next Monday, we have prepared a detailed plan and would have had it ready for April 26. When the Court granted the continuance we went back to the drawingboard, back to the computers, to make certain changes which in testimony on April 26th we were going to recommend to the Court that those changes be made.

I believe, though, that all of those changes will be completed. Frankly we have gone back on a more relaxed schedule in view of the continuance, Your Honor, because we had been working at a much harder and faster rate. I think if we go into the schedule that we would be operating on prior to last Friday I would except to be able to have that plan filed with the Court perhaps by next Friday, if not, within two or three days thereafter.

The Court: All right.

Was there any feeling of reluctance on your part last week in reference to releasing that plan, Mr. Little?

Mr. Little: My only reluctance, and there was a reluctance to release it in a piecemeal fashion, I would [11] ask for permission of the Court—I think all of us are in a delicate position and we have a matter pending in court, yet

it is a matter of which greatly affects a great many people. If we are to release the plan I would like to advise the Court that on the same day we file it in the court and make it available to all counsel we will have a presentation to the press and to the public of the plan.

We are afraid that if parts of the plan leak out it can be misunderstood, misinterpreted and create a great deal of confusion.

We feel that we have an obligation, and I think all the educators would join in this, even if there is the remotest possibility of the plan being implemented that the public should know about it directly and from the sources who prepared the plan, the sources best prepared to explain it fully to the public. It would be conditioned, of course, on qualifying it by saying that plan has not been ordered implemented or anything like that.

But if we make it available to counsel they in turn have to make it available to their clients. Mr. Gravatt for instance, I believe he is representing several hundred citizens in Chesterfield County. And I would think that in view of that that all of the people could be affected by this plan should have it explained to them saying that this is [12] simply—we are not representing it as being the perfect plan, that we would welcome constructive changes suggested by the School Boards of Henrico or Chesterfield or by the State Board of Education, but I think as an essential element of our case we have to convince this Court that here is a plan that is practicable, workable, reasonable. That is the purpose for which we have prepared it.

The Court: Is that really a matter that the Court ought to get involved with? I mean the tribulations between the school board and public?

Mr. Little: No, sir, but I would feel a little guilty, sir, if I had not advised the Court of our plan as to how to disseminate this to counsel, to the Court, and to the public all at the same time.

The Court: Well, as I said before, I have confidence in the lawyers, that every lawyer has a double trust. He owes fidelity to the client, but he owes it to the Court too. I have no reason to believe that any of you will be, in spite of two reports that have come in to me, I don't think any of you are going to say or do anything that would reflect upon the system. That is the only thing I concern myself with.

Can anybody tell me, have you discussed it with your clients enough, Mr. Gravatt, I am sorry, take no offense.[13] I am not sure who represents who.

Mr. Gravatt: I represent the school board, yes, sir.

The Court: The school board. Have you discussed with your people in the event of a consolidated plan how long it would take them to come up with a suggested plan if that comes to pass?

Mr. Gravatt: Judge, I have discussed the matter, but the problem, as you are well aware, I am certain, there are so many unknown things involved.

We have got three different kinds of school systems. Chesterfield, they are operating an ungraded school system. You have problems about curriculum. You have got problems about finances, and all of these lie within the control, independent fiscal bodies. Until we know something about how those things, what kind of cooperation and what kind of arrangement will be made to finance this school system, to begin with, we are in an extremely difficult position to try to come to any conclusions about a plan or how we can

coordinate and exchange the pupils back and forth, as I take it, is contemplated in this matter. What adjustments will have to be made in the admission of say children in an ungraded school into a graded school and children that are in an ungraded school into a graded school, and those matters.

[14] The Court: May I ask you this? Do you believe that—I was about to say feasible, but that word doesn't mean any more than reasonable, or reasonable means something, I am not sure—

Mr. Gravatt: Workable the Court said.

The Court: Workable. You know, a consolidated plan, if it comes to pass, I reiterate again that that is an open question—

Mr. Gravatt: I understand.

The Court: But it is like a compromise where the other fellow doesn't get a chance to say anything, if you pay the fellow everything he wants or everything he thinks he is entitled to, that is no compromise. It strikes me any consolidated plan might well be the product of all three school bodies.

Now, do you know of any reason why your people might not confer with whoever they ought to confer with, with the city and Henrico and see if, in the event—you don't even have to tell me, or anybody else—in the event it comes to pass you would be in a position of saying that this is the plan we would all recommend to the Court.

Mr. Gravatt: No reason in the world why the superintendents and the technical personnel in the three bodies cannot get together and discuss the problem. How much [15] progress they can make is another question. But cer-

tainly no reason why, and we would not be in any wise—we would be glad to cooperate in discussing with the Richmond School Board or the Henrico School Board, or anybody, the problems that there will be and what the possible solutions might be. I think this is reasonable, and in view of what I understand the law to be I think it is appropriate that we should do so.

[16] * * *

The Court: Good.

All right now, how about—who represents the school board of the county? Mr. McIlwaine? I suppose your people would be the same, wouldn't it?

Mr. McIlwaine: It would. We are currently engaged, of course, in making preparation for September in accordance with the existing situation, and that has not been predicated, but we would cooperate and confer with Chesterfield in trying to cooperate with the city if it became desirable.

[39] * * *

The Court: You have acquiesced that if you get these school boards together to chat, and I have not ordered it, but I think it ought to go to the supervisors and counsel too. If everybody sincerely wants to do what the law says may have to be done, and sincerely has the interests of the children at heart, as distinguished from pronouncements established, and I have no reason to believe they have anything but the interests of the children and to do what the law says, then they should sit down and settle all of these things about finances and all of those problems. It can't hurt no matter what happens.

* * *

SUMMARY OF RICHMOND SCHOOL BOARD'S PLAN OF DESEGREGATION FOR THE CONSOLIDATED DIVISIONS

Filed May 4, 1971

Consolidated Plan: For the elimination of all vestiges of a dual system of schools and the operation of a unitary system in a consolidated division composed of the public schools of the City of Richmond and the Counties of Henrico and Chesterfield.

Summary Of Plan

1. The plan is aimed at providing meaningful integration and equal educational opportunity at every school in the Richmond metropolitan area.

2. All schools will reflect a viable racial mix as the primary means to insure not only the achievement of educational goals, but also the attainment of over-all stabilization throughout the system.

3. Free transportation will be provided for all pupils throughout the consolidated division in accordance with existing state standards.

4. The racial composition of the faculties in each school will approximate the racial composition of the subdivision in which the school is located. Exceptions will be made for specialized faculty positions.

5. Recommended organizational structure of consolidated school division:

(a) Consolidated division will be composed of six subdivisions each containing a viable racial mix of black and white students reasonably reflective of the racial composition of the metropolitan area.

(b) Each school within a particular subdivision will contain a viable racial mix.

6. Recommended administrative structure of consolidated school division:

(a) A single consolidated division school board composed of nine members. Representation to be based upon number of students enrolled from each political subdivision.

(b) To insure the advantages of decentralization, each subdivision will be governed and administered by its own board possessing as much autonomy as is feasible.

(c) Operating expenses and capital outlay to be shared by each political subdivision in direct proportion to the number of its pupils in the consolidated division.

A. Rationale For Consolidated Plan

The racial composition of the student population of the three Richmond metropolitan area political subdivisions has been approximately 67 per cent white and 33 per cent black for more than ten years. A racial mix in each school in the Richmond metropolitan area which approximates that of the entire area will be productive of a viable racial mix of black and white students and will provide meaningful integration for all pupils within the consolidated division. The attainment of these objectives holds the most promise for a stable system of public schools in this area and will insure the full measure of equal educational opportunity for all students.

B. Plan Of Organization

The plan was designed to show that a consolidated school system could be implemented from the situation as it existed in September, 1970. The present geographical attendance zones of both Henrico and Chesterfield, as well as

the Plan I geographical attendance zones for the City of Richmond were used as the basis for the development of the consolidated plan. While the plan is based on a static situation incorporating actual student memberships in all schools in Henrico and Chesterfield as of September 30, 1970, updated projections of pupil enrollment under Plan I in the City of Richmond, and the existence of present school facilities, it is nevertheless immediately adaptable to changes in enrollment, attendance areas, grade level organization, and the availability of new physical facilities.

The consolidated plan embodies no alterations in the present organizational structure of the individual schools or school divisions. Some changes will be recommended, however, such as the establishment of a kindergarten throughout the consolidated system as well as the attainment of over-all uniformity in grade level organization.

The six subdivisions will contain a total student population and racial composition as follows:

Subdivision	*No. of Students*	*Per Cent White*	*Per Cent Black*
No. 1	18,123	62.6	37.3
No. 2	20,059	63.4	36.5
No. 3	17,749	64.7	35.2
No. 4	19,086	62.7	37.2
No. 5	19,594	70.0	29.9
No. 6	9,387	81.6	18.3

Due to the existence of certain distinguishing factors in Subdivision No. 6 such as its relatively sparse population, its larger geographical area, the greater distances between its

schools, and, with certain exceptions, a lesser degree of racial imbalance in its schools, there is less need to materially alter the assignment of students within this subdivision.

Student Assignment

The consolidated plan is so designed that to the degree that the racial composition of a particular neighborhood attendance area approximates the racial composition of the subdivision itself, there is less need to exchange pupils residing in such a neighborhood. Where racial imbalances exist, however, students will be exchanged between schools within their particular subdivision in order that a viable racial mix may be maintained in each school in that particular subdivision. Where racial imbalances necessitate the exchange of students between schools, it is recommended that the pupils to be exchanged be selected by any one of the following methods or any combination thereof:

(1) techniques of island, satellite, or block zoning.

(2) use of various socio-economic indices, such as educational level of parents.

(3) objective selection, such as utilization of dates of birth.

While each of these methods has certain advantages and disadvantages, use of the latter technique is recommended in that the pure objectivity inherent in this approach affords the most equitable treatment to all.

Student Transportation

Embodied in the consolidated plan is an exchange of students within subdivisions that will require the transporta-

tion of approximately one-third of all the pupils in the consolidated system. Preliminary indications are that the 120 buses which the City of Richmond is presently in the process of procuring, along with the existing transportation facilities of the two counties will be adequate to fulfill the transportation requirements of the consolidated plan.

Filed herewith are the following exhibits:

(1) Three maps of the consolidated school division showing school locations and geographical attendance areas at each of the elementary, middle and high school levels.

(2) Narrative descriptions of subdivision boundaries.

(3) Statistical analysis of the consolidated plan.

* * *

OPINION AND ORDER OF UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF VIRGINIA, C.A. NO. 3353, DENYING MOTION TO CONVENE THREE-JUDGE COURT, DATED JULY 20, 1971

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at pp. 156-62]

* * *

] PROCEEDINGS

gust 16, 1971) (Monday at 10:00)

he Clerk: 3353-R. Carolyn Bradley, et al. versus School d of the City of Richmond, Virginia, et al.

r. William Taylor, Louis R. Lucas, James R. Olphin, Ralph Page represent the plaintiffs.

r. Andrew P. Miller, William G. Broaddus, Patrick , L. Paul Byrne, Andrew Wood, J. Segar Gravatt, er Rudy, Frederick T. Gray, James E. Lawler, George ittle, John O'Brion, Robert D. McIlwaine, III, Walter Rogers, J. Mercer White, William L. Wimbish, and el Balfour represent the defendants.

9] * * *

A. HOWE TODD

called as a witness and, having been first duly sworn, examined and testified on his oath as follows:

* * *

1] Direct Examination

Mr. Little:

Would you please state your full name and title, sir? A. Howe Todd, Director of Planning and Community elopment for the City of Richmond.

Mr. Todd, what training, if any, have you had in the of planning? A I have a Master's Degree in City ning from Massachusetts Institute of Technology.

Would you be kind enough to outline your experience anning for the Court? A I started my employment e Planning Office in 1947 and have worked in planning

since that time. For two years I was the Director of the Regional Planning Commission of Richmond, Henrico, and Chesterfield, terminating that responsibility in 1960. And since that time have been the Director of Planning for the City.

The Court: Gentlemen, do any other counsel wish to examine Mr. Todd on his qualifications? If not, he is qualified.

Mr. Little: All right, sir.

By Mr. Little:

Q Mr. Todd, you referred to the Richmond [A-22] Regional Planning Commission. Would you tell us when that was first formed, sir? A The Richmond Regional Planning Commission was formed in, approximately, 1958.

Q Who were members of that? Detail the composition of the commission, if you will, sir. A There were three jurisdictions involved, Richmond, Henrico, and Chesterfield. There were three representatives from each jurisdiction, one from the governing body, one from the Planning Commission, and a citizen-at-large.

Q What was the purpose of the Regional Planning Commission, Mr. Todd? A There had been growing recognition in this area during the '50's of the need for area-wide solutions to area-wide problems, problems that could not satisfactorily be handled by the localities working independently. And therefore the Regional Planning Commission was established to provide regional planning efforts.

Q How was it funded, Mr. Todd, the Regional Planning Commission? A On a pro-rata basis, based on population.

Q By each of the participating political subdivisions? [A-23] A By the three jurisdictions, that is correct.

Q All right, sir.

Mr. Todd, if you will, sir, with the Court's permission, would you proceed to the first map that is on the board, Exhibit 74, and give the Court a general orientation of the metropolitan area consisting of the three political subdivisions of Richmond, Henrico, and Chesterfield? A This is a map, a straight base map, of the Richmond, Henrico, Chesterfield area.

The dominant landmark is the James River, which is colored in blue and flows down through the center of the area. Chesterfield to south and generally—or southwest, and Henrico to the northeast.

In this portion the James River separates the two counties and goes into the City and down in this portion again is a dividing line between the two counties.

Chesterfield Swamp is a major topographic area, we might say.

Q Pardon me. Did you say Chesterfield Swamp? A The Chickahominy Swamp, excuse me, Chickahominy Swamp along the northern edge of Henrico County.

As you can see from the streets on this base map, this is in fact physically one urban community, as shown by the map. It is very difficult, in fact, to know exactly where the corporate limits exist on this particular base map.

[A-24] Q Mr. Todd, would you turn to the next overlay to show the city limits superimposed on the metropolitan area map? A The county and city lines have been shown with the heavy line on this particular map. And this portion is the center city with the Henrico area like a butter-

fly, if you would, around the area and Chesterfield in this area.

Q All right, sir.

All right, Mr. Todd, would you resume your seat, please?

Would you furnish the Court with certain basic metropolitan statistics regarding area size and population sizes, please, sir? A Yes, sir.

Richmond City contains 63 square miles and the 1970 population of 249,621 people. Henrico County, 244 square miles, 1970 population of 154,364 persons. Chesterfield County, 445 square miles, 1970 population of 76,855 persons.

Q What is the grand total of the area and population in the three political subdivisions? A 752 square miles, 480,840 persons.

Q Mr. Todd, again, with the Court's permission, would you proceed to the easel and present Exhibit 53, which [A-25] I believe is the land use map? A This is a colored land use map showing the existing land uses, the colors indicating the broad category of land usage: yellow being residential; gray, industrial; red, commercial; green, open spaces and parks; and blue, public institutional and utilities.

The oldest portion of the City is here in the center, generally around Church Hill. And you will note the gray industrial and the red commercial intensity that exist in the old city, with a predominance of the yellow around the commercial and industrial center of the urban community.

It really is all one economic and social entity. In fact, anyone driving in on any of the radial roads would find a very difficult time in knowing when he would cross the corporate limits and come into the official City of Richmond.

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[A-28] * * *

By Mr. Little:

Q To what degree, if any, based on your experience as a planner, do you regard there to be interdependency or community of interest existing between the three political subdivisions? A There is a very strong community of interest that exists between these three localities. They are, in fact, only different parts of the same physical, social, or [A-29] economic entity. Many consultants, including Dr. Jacoby, Dr. Thomas Reed, Donald Larson, and Mr. Harland Bartholomew, when studying the governmental organization of this metropolitan area, have confirmed the existence of this strong community of interest. Extensive testimony also in annexation cases has elaborated on this community of interest.

The Court: Mr. Todd, try to reply a little bit more responsively. The question was what your opinion was as a planner, not what somebody else said. That is really not fair to other folks, unless that was the basis of your opinion.

The Witness: Partly.

The Court: In which event we will weigh it.

By Mr. Little:

Q Would you present to the Court some of the examples or indices of examples of interdependency or community of interest of these three political subdivisions? A In order for the Court to recognize and fully appreciate the indications of the existence of a community of interest, I think it is necessary to take just a moment and recall for the Court this history in development of this area, the trends of growth, and the characteristics of the population within the three-jurisdiction area.

The Richmond area is very similar to the [A-30] other metropolitan centers throughout the nation, especially those on the eastern seaboard where the cities are very old. The city, of course, starting in the center of the urban community, is more dilapidated or worn out—in the city, in the center—and growth has occurred principally at the edges. It has spread as if you were blowing up a balloon. The old, worn-out core contains the poor, the black, the very young, and the very old, and is surrounded by the newer bedroom communities containing the rich, the whites, and the most productive age group.

But it is still one single community. Just as an arm or a leg is a part of the body, so the bedroom communities or the commercial or industrial areas of the center are parts of a single economic or social entity.

Now, the speed and direction with which growth has expanded outward has depended historically upon the method or mode of transportation available. This next exhibit reflects this.

There is an accepted maxim of transportation which says that people will generally travel no more than 30 minutes to or from work morning and night. And this particular chart—

[A-31] * * *

Mr. Little: Exhibit 60. The witness is now referring to Exhibit 60, entitled "Thirty-Minute Travel Time to Capitol Square."

The Court: All right.
Go ahead, Mr. Todd.

The Witness: In the very center around the star, which represents Capitol Square, you see a little dotted circular

area which is the area that could be traversed by foot or on a horse, and that arrow to that area indicates about 1810 as the date at which the geographic limits of the urban Richmond City at that time would extend.

Later, after the streetcar was invented and the lines were laid out northwardly and southwestwardly and so forth, the outlimits of urbanization rapidly extended the area of the streetcar-city being by about six times the area of a walking-city. And the line shown up there to 1920 would reflect generally the urban limits at that time and with that mode of transportation.

Of course, the automobile is the invention which really altered the speed as well as the timing of [A-32] growth, especially after World War II. The dash-dot heavy line with the date 1957 on it indicates the 30-minute travel time limit in 1957 under the highway network as of that time. And the black line shows the urban limits under that maximum of 30 minutes travel time that would exist when and if the entire interstate system had been constructed, as well as the R.M.A. expressway.

By Mr. Little:

Q Mr. Todd, with reference to that, what, in figuring this 30-minute travel time—would you indicate to the Court the times assumed for travel? I think it shows on that.
A The speeds?

Q The speeds, yes, sir. A The source of this is not concocted, really, by my office at all. It was taken from the accepted manuals of traffic engineering. And the speeds are shown on the exhibit. Streetcar speed, this is during peak hour, is ten miles an hour, and automobile time is 20 miles an hour average on arterial streets and 40 miles per hour average on expressway. The latest manual, traffic engi-

neering handbook of 1965, provides these speeds and the source given, Wilbur Smith and Associates in his book Future Highways and Urban Growth.

[A-33] Q Continue, Mr. Todd. A So we have said that generally the cities have grown where the vacant land is and at the edges and have spread limited principally only by the mode of transportation to the outer limits and the 30-minute accepted travel time.

Subdivision's activities and the location of building permits through the years have indicated very clearly that there has been very little growth in the central portion but increasingly rapid spread at the edges, almost as if you drop a pebble in the water and the wave moves outward. And there has been almost an undertow in the center, and in fact the population statistics will show there has been a decrease in the population in the center.

For instance, from 1900 through 1942, to show you the reversal of the growth pattern, from 1900 to 1942, 98 percent of all the growth in Richmond, Henrico and Chesterfield occurred within the City. But the period after that, after World War II, from 1942 to 1968, 99 percent of all the growth occurred within the two county areas and only one percent occurred in the City of Richmond.

This next exhibit—

Q Number 71. A —is a population graph which shows the [A-34] population trends from 1920 through 1970. The heavy black line at the top indicates that the total area of Richmond, Henrico, and Chesterfield has been consistently increasing. But you will note that the City of Richmond after 1950 reached a peak and lost population from '50 to '60 and on down to the time of annexation in

1970 when some of Chesterfield was added back into the City.

It is interesting to note from this chart that from 1920 the City contained 85 percent of the metropolitan area population. However, since the rapid decline of the City and the rapid increase in the county, even after the extensive annexation in Chesterfield only 52 percent of the metropolitan population exists within the City.

If you will look at that chart you will see also that from 1950 to 1960 there was a period of population loss. There was a loss of 10,000 people in the City of Richmond between '50 and '60. There was a loss of 30,000 white people and an increase of 20,000 black people.

The significant thing, however, in the population change that took place during this decade is not only the absolute loss of population within the City, but the imbalance in the age composition. While there was a six percent loss in total population, the very young, those under 18, within the City of Richmond increased 18 percent. [A-35] But there was a decrease of 11 percent in white population under 18 and an increase of 63 percent of blacks under 15 years of age.

For the very old, 64 years of age and over, the City increased 29 percent, but there was a loss of 21 percent of whites and an increase of 61 percent of blacks that are 64 years and over.

Now, this doesn't mean that the Richmond community is becoming economically stagnant at all, but it simply indicates that there has become somewhat of an imbalance if you look only at your jurisdictions and try to take the arbitrary corporate limit that was determined by previous annexation courts and say that within that corporate line is in fact the City.

There is a correlation between the very poor, the uneducated, those with the poor housing, and the black. That is why these kind of statistics and analyses of the blacks and the very young and the very old are important in understanding the population imbalance and the needs of the area.

It was found that, using the 1962 census as a source, that 76 percent of all the families in Richmond, Henrico, and Chesterfield making less than $3,000 a year, 76 percent of them lived in the City of Richmond. 50 percent [A-36] of all the families in the City have incomes less than $5,000, and one quarter or 25 percent of all the families in the City make less than $3,000.

Now, if we could have Exhibit Number 57.

This exhibit indicates the racial composition trends for the past 30 years for the City of Richmond, which is shown by the two diagrams on the right of the exhibit, and for Chesterfield and Henrico combined by the two diagrams on the left of the exhibit.

The lower diagrams indicate the percent trends, the changes in the percentages of racial composition. And the upper diagrams indicate the absolute population.

Looking first at the two counties combined. At the top you can see that the absolute population has skyrocketed generally after World War II. Again, I would recall for you the influences of the automobile as well as the economic conditions and mortgage financing trends of that time. But you will note there was little increase in absolute Negro population and very—or black population—and very extensive increases in the white population. In fact, looking below at the percents you see that the percentages actually decreased from 18.1 percent in 1940 of black population to 8.4 percent in 1970.

The dashed line through the center of that [A-37] diagram indicates the Negro metropolitan percentages for Chesterfield and Henrico.

Turning now to the City of Richmond, you will note the loss from '50 to '60, looking at the top diagram. And there again you can see that the loss was in white population not in black population, since the black population continued to increase through the three decades. But a substantial loss in white population. In fact, if you take that last 1970 white population figure, you can see the annexation that occurred from Chesterfield. Had that annexation not occurred, the figure would have been much lower down on that righthand edge, if that were subtracted.

The bottom diagram showing the percentages for the City of Richmond indicates that the black population in the City increased from 31.8 percent in 1940 to 42.3 percent in 1970.

Q Even after annexation? A Even after annexation. In 1970 blacks constituted 26 percent of the total population, but 84 percent of them lived within the City of Richmond.

Q You say 26 percent. You mean blacks constituted 26 percent of the racial composition of the three political subdivisions? [A-38] A Of the three together, Richmond, Henrico, and Chesterfield.

Q But— A But 84 percent of them live within the City of Richmond.

Q Turning now to Exhibit 55, Mr. Todd, would you please explain that? A I feel very strongly that economic interdependence between jurisdictions does speak to the community of interest, and this exhibit shows the compari-

son of employment opportunities between Chesterfield County, the City of Richmond, and Henrico County.

And you can see very vividly that the greatest supply of jobs is within the City, with 129,590 jobs in 1970. Chesterfield records 12,868 and Henrico 22,872.

I would say also that in recent projections of future employment done by Roanoke Research for the Richmond Regional Transportation Study, the projections into the future show that the same percent of approximately 75 percent of the job opportunities will remain within the City of Richmond.

Next Exhibit.

The last exhibit showed that the most jobs—

The Court: Mr. Todd, mention the number for the record, please, sir.

[A-39] It is 56.

Mr. Little: He referred to the last exhibit, Your Honor.

The Witness: Number 55.

The Court: 55.

The Witness: The last exhibit, Number 55, showed that most jobs were in the City.

This next exhibit, Number 56, shows that a very large percent of the residents from Henrico and Chesterfield counties do in fact come into the City for these jobs.

Now, the 1970 census data on employment and place of residence is not available at this time, and so therefore the source of this information is for Chesterfield the 1968 school census, done by the Chesterfield School Board, and the Henrico statistics or data based on the 1963 data provided in the annexation case at that time. So that 48 percent from Chesterfield shown on Exhibit 56 really is statistically prior

to annexation, and the coloring shown on the map shows the old City prior to 1970.

We have obtained additional information regarding selected professions and employment sources to see whether this also correlated with the fact that there was a large amount of county residents who did compute [*sic*] into the [A-40] sources of employment within the City.

For instance, from the 1970 Greater Richmond Telephone Directory it was found there are 649 attorneys listed. Of the 649, 90.1 percent or 586 of these attorneys have their offices within the City. And of those 586 attorneys 51.4 percent or 301 live within the City, 42 percent or 246 live within Chesterfield or Henrico, and six percent live elsewhere.

For five selected banks an investigation was also made. Central National, First and Merchants, Metropolitan, Bank of Virginia, and State Planters. There were 3,493 employees in 1970. 41 percent lived in the City of Richmond, 33.7 percent lived in Henrico, 16 percent lived in Chesterfield, and nine percent lived elsewhere.

We investigated the employment of the State Board of Education and, according to their Christmas card mailing list for 1970, found that of 289 employees 35.9 percent lived in the City, 33.6 percent lived in Chesterfield County, 30.1 percent lived in Henrico.

And now if I could have City Exhibit 58.

Mr. Little: School Board Exhibit, Mr. Todd.

The Court: Let the record so reflect.

The Witness: To further substantiate the commuter traffic, traffic counters were placed at all of the [A-41] roads coming across the corporate limits during the month of March in 1970. And the vehicle—

By Mr. Little:

Q 1970, Mr. Todd? A 1971, excuse me. 1971. During the peak hours seven to nine during the month of March exclusive of Monday and Friday. And the volume of cars going into the City and the volume of cars leaving the City were calculated and accurately plotted on this exhibit entitled, "Morning Peak Hour Traffic Volume at the City Limits."

The width of the black arrows indicates the volume of cars that would be city bound, and the width of the gray arrows indicates the volume of cars county bound.

And it is readily seen from the exhibit by far the greatest number of vehicles are coming into the City during the morning peak hour of seven to nine.

It has been argued previously that these cars may be passing on through the City and not stopping within the city. And I would call your attention first to the fact that practically all of the inbound areas are twice the size of the outbound areas.

If you want to take particular instances, you could, say, take I-64 coming in from the Tuckahoe area and west of Henrico, 4,600 cars coming in, 1,700 coming out. [A-42] And I-64 on the east, again the majority of the cars coming in. Or I-95 coming in from the north, almost twice the volume coming in; and from the south also, almost, not quite twice the cars coming out.

So you can see the cars are not passing through, but this does indicate commuter traffic coming into the City.

City Exhibit Number 54.

This exhibit is entitled, "Concentration of Certain Economic Functions in the Richmond Metropolitan Area." And the purpose of the exhibit is to illustrate that the City is the principal location of the economic base factors for the

support of the urban community of Richmond, Henrico, and Chesterfield.

The two bars on the left of the exhibit reflect population in 1970. The black bar is for the City of Richmond and the gray bar is Chesterfield and Henrico combined. And of that population as you see that, 52 percent of the population is within the City and 48 percent within the county.

And then as you look at the bars to the right of the population, the first is retail sales. You see that although the population in the City is 52 percent of the total population, the City contains 62 percent of the retail sales volume.

[A-43] In the next bar the value added by manufacture although it is 52 percent population, the pro-rata share would be 52 percent of the value added by manufacture, in fact it is 76 percent within the City and 24 percent within the two counties.

The covered employment, again we have spoken to the employment source within the City. It is 78 percent within the City as opposed to 22 percent in the two counties.

Q When you referred to covered employment, would you explain to the Court the definition here? A The covered employment is the employment provided by the Virginia Employment Commission. It is the employment subject to the state unemployment taxes levied by the state and would involve those employers that are nonagricultural that have four or more workers for 20 weeks during the year.

Q Mr. Todd, referring now to Exhibit 59, which can be seen is nothing but a blank base map, in other words a map of the three political subdivisions, would you discuss the degree of interdependence, if any, between the public and semi-dependent facilities? A All right.

If you turn to the first—we have three overlays. The first overlay indicates the location of the [A-44] major public and semi-public recreational facilities. It does not show private golf courses but does show public golf courses, major fairgrounds, these kinds of facilities. The stadium, Williams Island, the James River, and so forth. The James River Park. You will notice they are generally scattered throughout the area. The major City parks, the James River Park, Bryan, Washington Byrd Park, Forest Hill Park, are found within the City.

Those wider open spaces in the county areas are principally the golf courses. There are really no public golf courses within the corporate limits. There is a private Country Club of Virginia, but for golfing the people of this community would go to the golf courses in the county. For the James River Park and for facilities like the city stadium or ball park or coliseum, they would go to those facilities located in the City.

Simply again says from a recreational and social standpoint there is an interchange or interaction by the people between these communities.

Next.

This overlay by three different symbols shows the major public and semi-public educational facilities, cultural facilities, and transportation facilities.

There are six schools of higher eduction [A-45] within the City of Richmond; one, a major medical facility, the Medical College of Virginia. There are also the main libraries, reflected as cultural facilities, and the major museums located within the City. The airport, the principal airport, is in Henrico County, owned by the City. Deep Water Terminal is shown on the southern edge of the City.

And again it would show that for community facilities,

major sources of higher education, of transportation, there is necessarily an interplay and interaction and interdependence by these three jurisdictions and facilities, the community facilities that are provided.

Next.

This last overlay shows the location of the hospitals within the area. And you will notice that most of the hospitals are in fact in the most congested and developed center city portion. There are some 17 hospitals, counting the sanitariums, within the City and only one in Henrico County. And therefore you will find that most of the people in the community of Richmond, Henrico, and Chesterfield do come into the City for hospital services.

The diagram on the right, City Exhibit 60—

Q 61. A 61—reflects that the bar graph showing the percentages of births of the resident mothers of [A-46] Chesterfield or Henrico County that occur within the City of Richmond.

On the left, 70 percent of the resident mothers from Chesterfield have the births in the City of Richmond. Henrico, it is 79 percent. And within the City it is 94 percent.

Deaths are not as high. The figures are not as high. And that is understandable, as you wouldn't choose your location of death as well as maybe having a child. 49 percent of Chesterfield population deaths occurred within the City, 55 percent Henrico, and 85 percent City of Richmond.

Q Well, Mr. Todd, having gone through these indices of community of interest, would you attempt to summarize them to the Court? A Yes.

I would say that this exhibit demonstrates visually the location of the major public and semi-public facilities. And as you recall the significance of these facilities, that they are

major, main libraries and museums and hospitals and places of higher education and major recreational resources, it is evident that there would be a strong tie and a community of interest from the people who would be living in the out-reaches of Henrico and Chesterfield who would find it necessary and desirable to use these facilities that [A-47] are located in one of the other two locations.

Q Would the same rationale apply to the other two exhibits that you have reviewed for the Court in summary? A Yes, sir.

Q Mr. Todd, briefly describe to the Court, if you will, what provisions exist, if any, for the mutual control of the development of subdivisions near or contiguous to the City of Richmond. A The enabling statutes of the state provide that cities of the size of Richmond can have joint subdivision control for five miles beyond the corporate limits. This is done by administrative review and approval by the City Planning Commission as well as by the planning commission of the county jurisdictions.

[A-48] * * *

Cross Examination

By Mr. Lucas:

Q Mr. Todd, you mentioned the Regional Planning Agency. Can you tell me various regional planning bodies that exist that cover the Richmond, Henrico, and Chesterfield areas at the present time? In addition to the various city and county planning commissions, what other bodies are there? A There is a Richmond Regional Planning District Commission.

Q What is that? A It is composed of the counties and the City of Richmond in planning district 15 established by the State of Virginia as the outgrowth of the Hahn Commission work. Chesterfield elected not to be a part of this regional planning district commission.

Q When was that set up? [A-49] A Well, as I say, at first there was a regional planning commission set up in '58, and that continued with Richmond, Henrico, and Chesterfield until the planning districts were established. And then all across the State of Virginia the existing regional planning commissions were changed into regional planning district commissions and each jurisdiction had to sanction their participation in this newly formed district commission, and Chesterfield chose not to. I think this was in 1964 or '65.

Wait a minute, that is not right. About 1969 I think is when they formed the district commission.

Q And what are the components of planning district 15? A Richmond, Henrico, Chesterfield, Hanover, Goochland, Powhatan, New Kent, and Charles City.

[A-52] * * *

Q Are there economic factors which you are aware of that effect a containment with respect to black citizens in terms of their residence within the City of Richmond as opposed to the suburban areas? A Yes. I would say that cheaper housing supply is within the City and that blacks generally have the lower incomes and therefore that is an economic factor that would tend to cause them to locate within the City.

Also employment.

Q How does employment affect this? A I think there are fewer employment opportunities, which goes back to the possible lack of education for one thing, that would say that blacks would not have as high incomes as whites.

[A-53] * * *

Q In your experience in working with these subdivision developments in the area outside of Richmond, has it come to your attention any practices which have the effect of containing black areas or, shall we say, encircling them, locking them off from white areas of residence, particularly with respect to things such as zoning practices or how the streets are laid out, the size of the blocks? A I can't think of any zoning practices.

I do know that back through the years in subdivision practice there has been a few times that I can recall instances where through lots have been designed that would back homes up to an adjacent black community or small neighborhood [A-54] that would be adjacent to the land being subdivided. Through lots are not normally used. And this would imply and I can recall that in these instances the reason was to encourage access into the newer homes through areas that were not black or in the lower residential value.

In the City of Richmond I guess if the location of the most obvious case where there was an unusual and old subdivision practice over on the Peter Paul tract years ago, I think it was in the '30's, there was about a 74-foot buffer that was designed at the rear of the alley line to buffer a white community from an adjacent black community.

Q What about the length of blocks? What is the normal length of a city block? A Subdivision regulations pre-

scribed that the normal length should not exceed around 1,300 square feet. I have seen instances where the length of the block would be stretched in the same situation where they did not wish to put another street in order to avoid access through the black community. This has not been a frequent experience at all. Three or four times is the most that I could ever remember in 20 years.

Q What happens if your office disagrees with the planning commission of, say, Henrico County about a subdivision? What is the appeal? [A-55] A The appeal is through the courts, but it would have to be a difference of opinion between the planning commissions, not my office. If the Richmond Planning Commission should disapprove of a subdivision and the County Planning Commission was to approve it, the court would be the appeal.

Q In other words, it can't be built unless you both approve or unless the court overrules one or the other, is that correct? A That is correct, yes, sir.

Q And how many such subdivisions come before your office in a year? A Well, they come about twice.

Q Before the Planning Commission? A Before the Planning Commission. They come only for tentative approval and then they have to be reinstated if they expire before they have reached final design. And this happens quite frequently, as subdivisions—the time for development stretches out. So I would say that, oh, in the hundreds, five or six hundred, probably, for the total three jurisdictional areas.

Q That would be on the average per year? A Yes.

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[A-56] * * *

Cross Examination

By Mr. McIlwaine:

Q On their overlay we have here, I believe the second item is education, asterisk or figure? [A-57] A Yes, sir.

Q That relates to what, sir? A Higher education.

Q And it does not include the public schools? A Does not.

Q Do you know how many public schools there are in the City of Richmond? A No, sir.

Q Do you know how many public schools in Henrico? A No.

Q Do you know how many public schools in Chesterfield County? A No.

Q Do you have some idea of what the distributions would be on such a map as this if you plotted on an overlay for the public schools of all three counties? A No. I am familiar generally with the location of the public schools within the City of Richmond, and maybe a few of those in the county, but not enough in the county to be able to plot them at all from memory.

* * *

[A-58] Cross Examination

By Mr. Byrne:

Q Mr. Todd, when you testified to the Richmond metropolitan area base map, which is Exhibit 74, is it not true that the standard metropolitan statistical area for Richmond includes Hanover County? A Yes, and my use of the

term "metropolitan" throughout my testimony was not the statistical standard metropolitan area but the metropolitan meaning Richmond, Henrico, and Chesterfield.

Q By the inclusion of Hanover County would you not have had to change your figures with reference to population trends and growth? A No, sir; they are accurate.

Which exhibit are you speaking of?

Q Number 74, we started with. A What is the title of that exhibit?

Q Richmond Metro Area Base Map with two overlays, I believe. A One overlay, excuse me.

Q Had you included it? A If I were showing the Richmond standard metropolitan area, statistical area, I would have included Hanover because about in '64 Hanover was added to the Richmond [A-59] Classified, and Henrico, but I—

Q It was added in 1963, sir. A Yes, sir.

[A-67] * * *

Q Now, I believe you testified that the Richmond Regional Planning District Number 15 was established pursuant to legislative authority after the Hahn report; is that correct? A Yes, sir.

Q Now, wasn't the purpose of that, Mr. Todd, to take into consideration all of these joint areas of cooperation that could be arrived at by these various counties and municipalities in this area? A You say take care of. I don't know what that means.

It is a planning body charged with making a plan, regional plan. And what happened when they changed it from

the regional planning commission, which had been established by agreement of Richmond, Henrico, and Chesterfield, into a planning district commission, the lines and geographic [A-68] limits having been set by the state as they divided the State of Virginia into some 22 regions.

Q And did they not by that find some community of interest among all these counties and the City of Richmond? A I am sure they probably found some, yes, sir.

Q So Richmond, Henrico, Hanover, Powhatan, Goochland, and Charles City, is that what I understood you to say comprise— A I didn't listen to the listing, but that is right.

Q Would you list them again for me? A Richmond, Henrico, Chesterfield, Hanover, Goochland, Powhatan, New Kent, and Charles City.

Q And Chesterfield didn't join? A Chesterfield did not join.

Q Now, actually you can't find anything in the preamble to that statute that indicates it was done for purposes of annexation? A No.

Q So that is just your opinion. A I didn't say it was done for annexation.

Q I thought I understood you to say that it was done so that Richmond could have some control over these counties and what they did. [A-69] A You are confused. What I was speaking—when I was talking about subdivisions, the power of joint subdivision control for five miles, I was not speaking about the planning district commission at that time. I said that the enabling statutes included the provision that center cities or joint subdivision

control outside of the corporate limits, because it was state policy or at least the state law provided for expansion of these cities by annexation into these areas, and they should have some right to review how these areas are developed as far as subdivisions are concerned.

Q You have made a study of the census of the major metropolitan statistical areas for the United States in 1960 and 1970, haven't you? A I used it, yes, sir.

Q Well, isn't the same thing happening all over the country to major cities as is happening to Richmond as to loss and gain of population? A I don't see any great difference. In fact, I said in my testimony that Richmond metropolitan area has the same problems and is growing and developing similarly to other metropolitan areas.

[A-70] * * *

Cross Examination

By Mr. Gray:

[A-72] * * *

Q I see.

Well, why is it that—there are some points in Goochland, Powhatan, and Hanover that are nearer to the center of Richmond than points in Chesterfield and Henrico, are there not? A Yes, sir.

Q And would that not have a material bearing on who comes to the City of Richmond to purchase, the distance? A I think the distance would affect whether they come and whether they have a community of interest or a strong community of interest, for instance.

Q Well, why did you elect just to choose Henrico and Chesterfield in this and not these other points that are nearer? A Well, I think I was speaking only to the jurisdictions as a whole, not to pieces of counties.

I think, in fact, that Mechanicsville is a little community that is rather close to the center of the City and is somewhat urbanized, and in fact there is a trend for further urbanization and for the development of a bedroom community in Hanover, that that does have in fact also, like Henrico and Chesterfield, a strong community of interest. But for the most part the total county of Hanover is basically rural [A-73] and does not have as high a degree of interdependence and interaction with the City. In fact, if you remember your own consultants hired by Henrico and Chesterfield said clearly and strongly—

* * *

Q Well, in other words, Mr. Todd, during the course of your direct examination you spoke of the arbitrary boundary lines established by courts or whoever, but you used the arbitrary boundary lines too in determining what you would present, the arbitrary boundary lines of Henrico and Chesterfield County? A I was speaking of arbitrary on the City's corporation line in that it has moved some 14 times through history with previous annexation courts, and two years after the annexation court has acted I find that the lines have no relation to reality, as the speed of urbanization has increased. So it is more arbitrary than the county line, which I have seen little change in.

[A-74] Q I had planned to get to it later, but as long as we are dealing at the arbitrary nature of it, isn't it a fact that the City of Richmond agreed to the line that is now

the boundary between Richmond and Chesterfield? A Yes, sir.

Q They did? A Yes, sir.

Q All right, sir.

Well, I would take it, then, that Exhibit 54, which deals with economic factors, shows Richmond to be a thriving commercial center, is that correct? A That is not the purpose of this exhibit. I don't know that it says that in any way.

It shows that of the three-jurisdiction metropolitan area, Richmond, Henrico, and Chesterfield, the City has more than its pro-rata share of the retail sales, the value added by manufacturing, government, and employment.

Q Could we agree it is at least more thriving than Chesterfield and Henrico? A Based on population, that is correct.

Q All right, sir.

And these retail sales would provide many jobs in the retail outlets, is that correct? A Yes, sir.

[A-75] Q Do you know whether retail employment generally is higher or lower paying than office workers and industrial workers and so forth? A I would assume it is lower.

Q It is lower.

Do they generally require more or less skill than office workers and industrial workers? A I would say—I would assume less.

Q Less.

So would you assume that lower skilled and lower paid people would need to live closer to their jobs than more affluent people? A Generally, yes, sir.

Q Then the existence of the majority of retail sales jobs in this area being within the City of Richmond would explain or help to explain why more of the lower paid people live near the City of Richmond, is that correct? A I think the greater employment opportunities in the City would encourage lower income people to live within the City, if that is what I hear you saying.

Q Thank you, sir. Thank you, sir.

Now, you have shown on Exhibit 53, the land use map, this has to do with the land, the actual uses of land in the area, is that correct? [A-76] A That's right.

Q Could you tell me, sir, whether the zoning laws in the City of Richmond with respect to residential development are more or less restrictive than the laws of Chesterfield County? A I haven't made a study of that, Mr. Gray. I am not sure I can answer. I understand Chesterfield has a recently developed new subdivision regulation which I haven't seen.

Q Well, are you familiar with the old one? A Only in a very, very general way, yes, sir.

I have seen what came in after annexation, and I did try to compare ours.

Q Do you know generally whether they are more or less restrictive than Richmond? A I would say less restrictive.

Q Less restrictive than Richmond.

Could you tell me the same thing for Henrico? A I am not as familiar with Henrico as I am with Chesterfield.

Q We can establish that as far as residential zoning requirements are concerned, Chesterfield is less restrictive than Richmond; right, sir?

All right, sir.

[A-77] * * *

Q What is the largest single product in the City of Richmond that adds to its large total of value added by manufacturing? A I don't know, sir.

Q Would you say that the tobacco industry is likely to be it? A Could be. I don't know.

Q And could you tell me whether or not workers in the tobacco industry, the production workers, are generally less skilled and receive less pay than industrial workers in textiles and chemicals? A I think that is true.

Q You think that is true.

Do you know that the major portion of Chesterfield County's industrial development is in the field of textiles and chemicals? A I think that is true.

Q So that if the existence of large tobacco industry in the City of Richmond is conducive to less skilled and lower paying jobs than the industrial in Chesterfield County, [A-78] that again would indicate that the lower paid people would live nearer their jobs in Richmond. A I think that is generally true.

Q Thank you, sir.

Now, it is possible, isn't it, Mr. Todd, to get the total employment picture and not just the covered employment picture? A Not at this time, readily. The 1970 census material is not yet available, and this—

Q Well, you got your figures from the Virginia Employment Commission, didn't you? A Yes, sir.

Q And doesn't Virginia Employment Commission also have the figures on total employment? A I am not sure.

Q All right, sir.

Well, we will do that later.

You would expect, though, that mainly in Chesterfield and Henrico we would have more agricultural employees than we do in the City of Richmond, wouldn't you? A I think that is true, yes, sir.

[A-79] * * *

Q Now, Mr. Todd, you show 48 percent of the residents of Chesterfield County working in the City of Richmond. But you say that these are pre-annexation figures, aren't they? A That is right.

Q So they don't mean anything as far as Chesterfield is concerned today, do they? A Well, I think they do in that I don't think [A-80] there would be a material change.

Q You don't think there would be a material change? A I don't have the figures.

Q Well, did you have the figures in the Chesterfield annexation case about percents of people who lived inside the annexed area who worked in the City of Richmond? A I think we did.

Q Was it considerably more than 48 percent? A It was 50-some.

Q So that the 48 percent figure has to be less, doesn't it? A Slightly less, I think. And I can get you that fact if you would like, but I don't think it would be material. I don't think from 48 as far as what this exhibit has shown.

The standard metropolitan statistical bureau definition by the Bureau of Census used 15 percent of the outlying county by the employment of the City to make it part of the SMSA.

That is part of an economic area of 15 percent, so even if you took five or six percent from 48 it wouldn't materially affect the picture.

Q But the current figures, you have them [A-81] available? A I don't have them available. I have to calculate them and estimate them. I would be happy to do it.

Q You don't know how many of that 48 percent that you show on there now live in the City of Richmond by virtue of annexation? A No, sir, I do not.

Q The annexed area of Chesterfield County was the most heavily populated area of Chesterfield County, was it not? A That is correct.

Q Would you suppose those in the annexed area who lived nearer to Richmond would be the ones more likely to work in Richmond? A I think that is true, but also consider industrial and commercial areas were annexed at the same time that would bring into the City jobs and employment for people that people in the outlying areas used.

Q Now, you have your population charts on Exhibit 57. And you have discussed the little pebble that we talked about in the annexation case being dropped in the creek and the ripples flowing out and causing the vacuum in the center. You didn't mean by that illustration to in any way indicate to the Court that black people are moving into [A-82] Richmond— A I hadn't testified to mobility at all, one way or the other.

Q And you have not made any determination as to the annual increase in black population in the City of Richmond due to the net immigration as opposed to the increase from natural causes, which would be the increase

of birth over death? A I have not made those calculations, but I am sure there would be a sizeable influx, I am sure.

Q A sizeable influx. A I would think.

Q Would 105 people a year jar you? A No, sir.

Q Would those—would that be sizeable, in your definition? A No, sir.

Q I beg your pardon? A I am not sure how many come in.

Q You say sizeable. What would you mean by sizeable? A I would think that a couple of thousand might come in.

Q So if it turns out that it is 105, it would kind of jar you, wouldn't it? [A-83] A Are you saying that it is 105?

Q I am asking you. I can't testify, Mr. Todd. A Then I don't understand your question.

Q Well, if I present a witness in this case who says that it is 105— A I think you should. I haven't investigated that question and don't know the facts.

The Court: Consider it hypothetically. That is what Mr. Gray wants you to do. And state an opinion.

By Mr. Gray:

Q That would be a surprise to you? A I would have expected it to be much higher.

[A-84] * * *

Q Now, you used two hours in determining your [A-85] traffic peaks, I take it, on that 58-A.

Let's take the first number there, Route 147 from Henrico city bound, 2,174. That is for the two-hour period? A That is right.

[A-87] * * *

Q Well, that raises a very interesting question.

I believe I heard you say on direct that these were traffic counters. Do you mean mechanical counters? A Yes, sir.

Q You didn't do O and D? A No, sir.

That was a subjective conclusion I just reached.

Q As a planner you are aware that in traffic circles traffic counter information is not regarded as very [A-88] valuable for determining the type of thing we are trying to get from that chart, is it? A No, I think you are wrong. It is very accurate when you are counting the number of vehicles going down a lane.

Q Not accurate in telling you how many vehicles are going into the City of Richmond to stay, is it? A It can tell you how many crossings go over that line between seven and nine, city bound and county bound, which is all that exhibit shows.

Q Well, the conclusion you are seeking to draw from it is that these are—community of interest between Chesterfield and Henrico and the City of Richmond. Now, if one of these vehicles is coming from Oregon going to Florida, it doesn't show much in respect to that, does it? A It counts it as it does any commuter traffic.

Q But doesn't indicate much about community of interest between Chesterfield and Henrico and Richmond? A No, sir.

Q And O and D studies would show that, would they not? A They would.

Q This is by far not as accurate, and an O and D study— [A-89] A I don't think it is as accurate as an O and D study.

[A-93] * * *

Q Negligible.

You have not included all of the state facilities on your exhibit, State Capitol and things of this type. Why didn't you include them? A As a matter of definition as to whether it is a cultural or educational or recreational facility as opposed to an office building.

Q I see.

Well, all of those facilities would help generate traffic into the City of Richmond, wouldn't they? A All of the state facilities?

Q Yes, sir. A Yes, they would. Yes, sir.

Q Would you agree that all of the state has a community of interest in the state government which is centered here? A I think that is generally true, yes, sir.

[A-94] * * *

Q Now, I want to talk to you about Exhibit Number 60, which has to do with your 30-minute travel times.

[A-95] Do you have any idea, Mr. Todd—well, let me first ask you, would the City of Hopewell, Petersburg, and Colonial Heights be such that the outlying county areas around them might have community of interest with them? A Yes, and I think that if there are two cities, as you move

from one city to the other, as you get closer to the other city, there is a stronger community of interest to the nearest city, for the most part. So there is a line, I would think, somewhere between Richmond and Colonial Heights, Petersburg area that would be a dividing line. It is a vague line; no hard and fast line can be drawn. But I think that as you get closer to Colonial Heights there probably would be a stronger community of interest.

Q I see.

So that from a substantial part of Chesterfield County would have a— A I didn't say that.

Q Well, a part. A If you look at the base map you will see there is very little urban growth that has occurred beyond the limits of Colonial Heights, and I think the line would be much, much closer to Colonial Heights than the City of Richmond, if you are trying to measure.

Q Urban growth is not the only index. [A-96] A It is not, but it is a strong index.

Q And where people purchase the retail sales, that is one of the indices? A That is right.

Q Would you think there is a substantial part of Chesterfield County in which the people would—there would be a kind of like a fall line on a river where they flow towards Petersburg to do their retail purchasing and towards Hopewell? A I think that is true.

Q And towards Colonial Heights to do the retail purchasing? A The only point I am making is in that reach by the Appomattox River it is a rural, open timber area, and the urbanization has not impacted on that area. There are very few people that make very few trips to town. And I

would guess many of those would go to the larger urban center of Richmond to get farm products and sell produce than they would go to Petersburg.

And therefore you find that the community of interest line would come much closer to the Petersburg area rather than try to place it halfway.

Q Well, insofar as the 30-minute travel line is one of the indices by which you would go, is there a substantial— [A-97] A Mr. Gray, I am not saying that is an indice of the community of interest. If you understood me to say that, I want to correct you before you question me on that, because the 30-minute travel time was an indice for the limits of urbanization.

Q I see.

Anything outside of that 30-minute travel line that you have shown is outside the limits of the Richmond urban area? A Urban area is usually contained within the 30-minute travel time.

Q I see.

Would a great deal of the potential urban area of Hopewell, if we do it by 30-minute travel time, overlap the 30-minute travel line you have for Richmond? A I think some of it would, yes, sir.

[A-105] * * *

Q Now, I wanted to clear up one point for my colleague, Mr. Byrne. He advised me during the recess that he thinks he was addressing himself to the wrong exhibit.

Would you take a look at Number 56, which is on the easel, which shows 66 percent of Henrico persons who are employed working within the City of Richmond. Those are 1963 figures, are they not? A That is correct.

Q So they do not take into account any industrial development in Henrico County since 1963? A That would be true. But again—

Q Mr. Todd, what is the best way of determining the distinction between what is urban and what is rural? [A-106] A The best way is by density.

Q And does the Census Bureau use a definition as to what is urban and what is rural? A Yes, sir.

Q What is that definition? A In the past several census statistics, the Bureau of Census has developed what is defined as an urbanized area around these metropolitan centers including those portions of adjacent counties that have reached the density that the census defines as being urban, and that is 1.56 persons per acre.

Q 1.56 persons per acre? A Yes, sir.

Q Do you recall at the time of annexation whether the area of Chesterfield County which had a density of 1.56 persons per acre extended beyond the proposed annexation line? A In 1969?

Q Yes, sir. A In 1969 I don't believe it did. I think in the future—I don't recall exactly, but it was an irregular line. We calculated it, as you remember, by study areas. And it should be in the—

Q If it extended at all beyond the proposed [A-107] annex. 'ion, it was very slightly beyond it, is that correct? A That is probably true. That is right.

Q Did you at that time project what portion of Chesterfield County would be urban in 1985? A I think we did, based on, I believe, the county's land—future land use plans.

We didn't make, I don't think, a new future land use plan, but used the county's plan and calculated densities and determined what would be the urbanized area by that definition in 1980.

Q What did that indicate with respect to the large majority of the acres of Chesterfield County? A I think the 1980 urbanized line stopped about at the northern limits of Pocahontas State Park, as I recall, which would cut the county about in half.

Q So that the southern half of the county as you best recall it would still not be urbanized in 1958? A That is correct.

[A-109] * * *

Redirect Examination

By Mr. Little:

Q Mr. Todd, Mr. Gray was just speaking to you in terms of urbanization and what standards of measurements were used, and you answered 1.5 per acre. What difference is there, in your opinion, between urbanization on one hand and community of interest or interdependence on the other? Are they coextensive? A No, they are not coextensive. I think urban area has a high degree of personal interaction and therefore the community of interest that pertains to heavily urbanized areas where there is specialization in this complex kind of society requires the interplay of personal action and strengthens the community of interest.

But beyond even the limits of urbanization, for instance, it was determined after careful study of the entire State of Virginia that any density over 0.06 persons per acre was in the process of becoming urbanized. And when you cut

out the purely agricultural counties of the state and study them you will find that they have these densities below this figure. So actually all of Henrico and all of Chesterfield are well above the density that is in the process of becoming urbanized, and there the effect of the community of interest is [A-110] at work.

Q All right, sir.

Well, Mr. Todd, let's assume a man living in the Varina area of Henrico County, which is essentially less urban than some of the other magisterial districts, are you saying or are you not saying that a man living on a farm, on a 400-acre farm, is the only man that lives there, is it possible for him to have a community of interest with Richmond?

A Yes, sir, it is possible.

I don't think he would have as strong a community of interest or as strong a social or economic tie as would some urbanite living in a bedroom community, relying for jobs and other services on the center city. But I do believe that agricultural residents, farmers and so forth, do have interests and ties with the center city. Again, the hospital, the sale of farm produce, the purchase of farm equipment, the other needs of these people would be less. But it would still be evident.

[A-115] * * *

H. EDWARD LORDLEY

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. O'Brion:

Q Please identify yourself for the Court. A H. Edward Lordley, Director of Public Utilities, City of Richmond.

Q How long have you been with the Utilities Department of the City of Richmond? A 35 years.

Q During your tenure with the Utilities Department [A-116] and as Director of Utilities, are you familiar with the relationship which has existed between the City of Richmond and Henrico County regarding the distribution of water services in the past? A I am.

Q Would you relate that to the Court, please. A This was with Henrico?

Q Henrico water services, yes, sir. A Henrico has been buying water from the City of Richmond over some number of years.

Prior to 1946 we had individual contracts with various non-resident customers. In 1946 we began to enter into contracts for sanitary districts in Henrico. These contracts provided for the City to sell water at the corporation line at certain rates to the county for distribution in the sanitary districts.

These—as the sanitary districts were extended, new contracts were executed until we had about 25 such contracts when we began negotiations for a longer term contract of some 20 years.

Q Is that long-term contract the one that currently exists between Richmond and Henrico? A That is the current contract that we have.

We entered into it in 1968.

[A-117] Q What was the duration of that contract? A That is a 20-year contract.

Q When was it executed? A It was executed to be effective on January 1, 1968.

Q Is it reflected in the Richmond Ordinances under number 68-40-41, to your knowledge? A It is.

Q Defendant School Board Exhibit 48, Your Honor. Under the terms of this contract, what is the relationship between Richmond and Henrico regarding water service? A The City of Richmond supplies water to Henrico at various points around the City. This supplies about 90 percent of the water now used in the county system.

Q Does the preamble of the contract recognize that both political subdivisions are fully independent in regard to the capacity to provide water services? A Well, the first part of the contract carries a stipulation that both parties are capable of providing independent supplies and recognizes that in the execution of the contract.

Q Do you know the purpose of that clause being included? A Well, I believe the purpose of including that [A-118] in the contract was to preclude consideration during annexation case if one was instituted.

Q What benefits flow to the City of Richmond from this contract? A Well, first the City sells all of the water to the county with the exception of small quantities produced by wells in the eastern section of the county. This means that we are able to get some part of our revenues from the county, which in turn helps the overall water rate to all our customers.

We also have the right to install gas mains in the county streets wherever we need to go, with the proper permits. It provides that when mains are installed with water mains, we pay half the costs, the county pays the other half.

And so it is mutually beneficial from the standpoint of gas main installation, revenue, and the sale of water from our central plant.

Q How about with regard to capital improvements towards carrying out the obligations of the contract? A Under this contract the City is obligated to make the capital improvements necessary to deliver water to the county at the various points specified.

The Court: Yes, Mr. Byrne?

Mr. Byrne: If it please the Court, I believe the contract speaks for itself. They have put it into evidence.

[A-119] The Court: Well, I think it does, too, but it might be helpful for the witness to paraphrase it.
Go ahead, Mr. O'Brion.

By Mr. O'Brion:
Q Talking about capital improvements. A The capital improvements are made by the City. We have a 20-year bond program in the City, so this permits us to make improvements over a long period of time and be able to program those improvements in our finances in accordance with the requirements of the county.
The county is required on November 1st of each year to give us their projected needs at various locations around the City.

Q How about termination of that contract? A Well, the contract has a 20-year termination clause and can be —it will continue in force and effect until cancelled by either party with certain notice.

Q How long will that contract run as to the year? A The contract was executed, as I testified, on January 1, 1968, will run for 20 years, so that will be December 31, 1987, I assume.

Q And how about the relationhip between Henrico and Richmond regarding treatment of sewage? A In sewage treatment the City began building [A-120] treatment works back in the early '50's and negotiated with the county for treating sewage from certain sections of the county.

In 1954 we entered into a contract with the county to treat sewage at that time primarily from the west end and northern sections of the county. These contracts had provisions for county participation in the capital improvement program over a period of 20 years and also to pay the city so much per dwelling unit for the sewage treated. This stayed in force and effect until 1968, July 1, when we entered into another 20-year contract with them for the treatment of sewage.

This contract also included the City building certain interceptor sewers or collector sewers out into the county at the City's expense under this capital improvement plan, this to be reflected in the rate.

Q Is this contract contained in City Ordinance 68-42-43, to your knowledge? A It is.

Q All right, sir.

Defendant's Exhibit 49, Your Honor.

What is the duration of—you have already stated that is 20 years.

Now, for Chesterfield County, would you give the past history and curent situation with regard to each of [A-121] these two utilities?

Mr. Gray: If Your Honor please, I voice an objection to this on two grounds: One, it is totally irrelevant to any issue before this Court. And secondly, that the contracts which he has indicated he is going to offer into evidence are the result of carbonized agreements not admissible in evidence.

The Court: All right. I will reserve ruling on the latter part of your objection, Mr. Gray, until those facts appear, if they do appear. Then I will consider it.

As to your first objection, I must overrule it on the ground of relevancy.

We are going to get a complete record in this case, gentlemen, if we are here all year.

Go ahead, Mr. O'Brion.

By Mr. O'Brion:

Q With regard to the relationship between Chesterfield County and the City of Richmond on a water service, Mr. Lordley? A Yes, sir.

Chesterfield County has over some years developed water systems over there. In the early '50's they were starting to grow. So for a period of about ten years we provided small quantities of water to them at various locations [A-122] under individual contracts approved by the Council.

In 1960 the county and the City entered into a contract for a ten-year period to supply water to primarily the northern section of the City—of the county on as-needed basis. They purchased water primarily during the summer months when they were having problems getting the water up into that area.

This contract ran for ten years and was terminated on the request of the county in accordance with the contract at that time.

On January 1, 1970, the City and the county entered into a contract for water supply to—either one to supply the other. This contract permitted the City to buy water from the county and supply the newly annexed area. This water is purchased at master meters. We pay the county 25 cents a hundred cubic feet for it.

At the present time this year we will purchase about $150,000 worth of water from Chesterfield under this contract which has a five-year termination and will terminate on December 31, 1974.

Q Does either party to that agreement have the right to purchase water from the other as needed? A That is correct.

Q Is that contract with—between the City of [A-123] Richmond and Chesterfield embodied in City Ordinance 69-229-234? A I believe that is the correct number.

Q Defendant's Exhibit 51, Your Honor.

How about with regard to sewage of Chesterfield County? A The City has not supplied any substantial sewer service to Chesterfield County in years past except for small places like Southside Plaza. But on January 1, 1970, we entered into a contract with a 20-year termination date on it for sewer services or treatment from either the City or the county. We would treat county sewage, the county would treat City sewage. This was a mutually beneficial contract, since sewage must flow down drainage basins' lines and knows very little about boundary lines.

Therefore, the sewage that comes in parts of the City will flow through the county, back into the City, and thence to our treatment plant. In other cases sewage in the City will flow into the county and then down to their treatment plant.

And the contract was based upon the concept that each will treat sewage from the particular areas in the county which are spelled out in the contract.

Q Now, when it initially started, who was treating the most sewage? [A-124] A At the present time and when

it started, Chesterfield was treating the bulk of the sewage. It is estimated that in about five years each will be treating about the same number of connections from each jurisdiction.

Q Is this contract embodied in the City Ordinance 69-298-233? A It is.

Q Defendant's Exhibit 50, Your Honor.

How about the future on utility services, Mr. Lordley? What method do you expect will be utilized in the future to solve these problems of water and sewage service? A Well, within this area I think the—and with these 20-year contracts that we have for sewer services in Chesterfield and Henrico and water services in Henrico, that we will supply the areas through contractual agreements between the jurisdictions involved.

Chesterfield County has developed and continues to develop adequate sources for water supply in Chesterfield, with sewage. And for water in Henrico I envision it will be through contractual agreements through the City and the counties.

Q And does the length of that contractual arrangement assist you in capital improvements? A Yes, it does.

Q I have no further questions, Your Honor.

[A-142] * * *

THOMAS C. LITTLE

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

District Court Proceedings of August 16, 1971

Direct Examination

By Mr. Little:

[A-158] * * *

Q Dr. Little, was an attendance plan for a consolidated provision prepared under your supervision? A It was.

Q Why was such a plan prepared, and what was the purpose of the plan? A At the time of the joinder in this case we represented that we would present a plan at the appropriate time, showing the feasibility of the operation of a school system composed of Richmond, Henrico, and Chesterfield County. The purpose of this plan is to demonstrate or attempt to demonstrate that feasibility.

Q Feasibility from an educational standpoint? [A-159] A Feasibility from an educational standpoint and what we interpret a judicial standpoint.

Q What was the starting point in devising this plan, sir? A Well, there were a number of starting points in this. First thing that had to be determined is what are your objectives in the establishment of such a plan.

The objectives that were sought or were aimed for, number one, that each and every school within the City of Richmond, Henrico and Chesterfield County, would be composed of a viable racial mix.

Number two, that the school divisions would be so divided and so organized that it would be administratively and educationally feasible from a management point of view.

And number three, that the school divisions would be so organized that the necessary transportation to carry it out could be both educationally and judicially feasible.

District Court Proceedings of August 16, 1971

Q Doctor, coming back, what source data, what basis source data, was used in the preparation of the plan? A This plan is a plan that is based on a static situation as of last September. The source data for the preparation of this plan were the enrollment figures supplied in interrogatories from Henrico and Chesterfield County which [A-160] was taken from their HEW Compliance Report showing each school, the racial composition thereof, and so forth, for it.

They were at that time operating on basically a neighborhood or proximal geographic zoning arrangement.

Since the City of Richmond was not operating on that basis, to get comparable data we went back to Plan I that was submitted to this Court as a possible means of operations which was based totally on the neighborhood concept of schools for elementary, middle schools, and high schools.

* * *

The Witness: The Court ordered Plan III. Plan Number I that was submitted to this Court was a neighborhood school plan, strictly geographic zoning, with what pupils would be within those geographic zone if that were ordered.

So that is the basis, and the date of the place of residence, the spot maps in relationship to that, are as of September 25 of last year, which would be the same and comparable to the same date of Henrico and Chesterfield County.

[A-161] By Mr. Little:

Q All right, sir.

So you used actual enrollment figures based on the information obtained from Chesterfield and Henrico to see exactly what the enrollments were at each school in those two systems. Then, as I understand it, you went to Richmond under Plan I, which was submitted to this Court as

part of a 90-day report filed by the City of Richmond, as I recall; right? A Yes, sir.

Q And you then placed the residence of all the City students as though Richmond had proximal geographic zoning or neighborhood schools, is that right? A That is correct, yes, sir.

Q All right, sir.

Now, you said you wanted to devise a plan that would be administratively feasible. Would you expand on that a little further, sir? A It is generally accepted that there are economies to a larger school district or administrative unit. You also reach a point, and I don't know exactly what that point is, some 50, 60, 70 thousand students, whereby it becomes unwieldy for certain types of operations, particularly your curriculum, your involvement, and neighborhood input into the [A-162] operation of your schools.

So we have prepared a plan which provides for a central administrative unit with one school board and one superintendent but six subdistricts which are approximately 20,000 students each, with the exception of subdivision six, in which your administration, not necessarily your control, but your policy making, not necessarily your policy making, but your administrative operations can be delegated to a subdivision, assistant superintendent, director, or whatever title you might choose to bestow.

Q Doctor, when you added up total enrollments of the three political subdivisions, what was—what are the total number of students that we are discussing? You are designing a system for approximately how many students? A Approximately 104,000.

Now, we have not included in this plan special education. Special education students have been excluded from

Richmond, Henrico, and Chesterfield County in the preparation of this plan on the assumption that they will be handled in a similar manner to which they have, and in none of our deliberations here with the Court, discussions with the Court, have we brought in the special education as a part of this.

Q Doctor, would such a system constitute the [A-163] largest school district in Virginia? A I believe not. I believe Fairfax would be still larger.

Q Any idea approximately how large Fairfax is, sir? A I have the figure someplace. I believe it is in the neighborhood of 125 or—

Q Just an approximation. We can bring that out later. A I would estimate 150,000. 140-150,000 maybe.

Q I see.

Doctor, you mentioned that there were certain advantages and certain matters that could be handled more efficiently by a larger system. Would you delineate some of those for the Court, please, sir? A I think it is generally accepted that a number of things can be operated on a larger—for the unit as a whole, and be operated more economically.

Such matters as purchasing, warehousing, plant planning —

Q Plant planning? A —buildings, planning of new buildings and facilities, computer operations, personnel recruitment and screening, are a few areas offhand that in my opinion can be [A-164] operated more effectively and more efficiently on a larger basis.

Q All right.

Doctor, I have gotten you a little off. As you came back you were giving the basis for the preparation of the plan, and you had gone over the static situation you developed as of September of '70 for the three political subdivisions. By static do you mean that this plan won't work based upon enrollment figures this coming September? A It will not work based on enrollment figures this September. It has not taken into consideration any growth, any loss, any shift. Neither has it taken into consideration any new buildings or facilities that may become available this coming September.

However, the program as written for this in a five-hour computer run time, any new data can be put in and it can be upgraded.

Now, it should make no appreciable difference in the subdivision delineations, because we think that the number of white and number of black pupils that we represent here is a pretty stable thing, and as you will recall from data that I have just presented, that has been less than one percent variation in the last 15 or 20 years. So your racial mix should not vary.

[A-165] Q Now, in looking at the three separate school systems presently operated by these political subdivisions, were there any variances in grade structure, and if there were—that is as between systems—how were these handled in the plan? A Yes, there were a number of variances within this and presented a great deal of difficulty in overcoming them.

Number one, Henrico County does not have a kindergarten, except some experimental, limited number of kindergartens. They operate an elementary school system basically, with some exceptions, of course, with the first grade through the sixth grade in the elementary schools. Rich-

mond—I mean Chesterfield is operating its elementary schools with kindergarten through the sixth grade. Richmond is operating its elementary schools with the kindergarten through the fifth grade.

So on the elementary level we have the kindergarten situation that presented somewhat of a problem. But the sixth grade in Richmond middle schools and in the elementary schools of Henrico and Chesterfield County.

Now, when we get to the middle schools or junior high schools, the two counties are basically operating junior high schools with grades seven, eight, and nine, whereas [A-166] Richmond is operating its middle schools with a grade six, seven, and eight. So that leaves a ninth grade in a little bit of a questionable point.

On the senior high school level, the City of Richmond is operating grades nine, ten, eleven, and twelve in their senior high schools, whereas the two counties are operating grades ten, eleven, and twelve in their senior high schools.

So all of these presented problems.

Q Then the plan, though, breaks it down into how many original structures, in essence? A Well, it was necessary to break it down into four—into five organizations. That is, the elementary organization, which represented K through five had to be treated. Then the sixth grade had to be treated separately because, again, the sixth grade was an elementary in part and middle school in part. The middle school was treated for grades seven and eight, because both or all three systems had seven and eight in either the middle school organization or in the junior high schools. Grade nine being partly in senior high schools and partly in junior high schools had to be treated as a separate organizational unit. And your senior high schools were treated as grades ten, eleven, and twelve.

Q Now, under this plan is there anything in this, [A-167] for instance, if Henrico does not have kindergartens, does this plan visualize that they would have to have kindergartens under this plan? A I would strongly urge that consideration be given kindergarten. I know the State Department of Education is also encouraging that. However, this plan is devised in a manner that it can operate with the present organization in each school.

We break them apart and in the end we put them back together as a school. But we had to break them apart for analysis.

Q Right, sir.

So you can operate under the consolidated plan even though not all of the systems for instance have a kindergarten? A That is correct.

Q And won't be forcing all of the systems to have a kindergarten? A That is correct, nor to change the other organization. This is predicated on what could have been done last September with the same grade organization that is now had with a number of pupils that were attending school at that time.

Q Well, now, under this plan would each school [A-168] in all three political subdivisions continue to house the very same grades and have the same attendance areas that existed in 1970, with adjusting for Plan I in Richmond, versus what actually occurred? A That is correct, yes.

Q Now, Doctor, before going to the easel—I wish you would in a minute and examine the subdivision plan for the high school level—would you give the factors that you considered in preparing the subdivision breakdown or the subdivision lines? A I believe, as I indicated, factor number

one would be that each subdivision at each level and each school would contain a viable racial mix.

Secondly, that transportation within this would be within reasonable distances. And—

Q What about the size of the districts, the subdivisions? A Well, the size of the subdivisions—there is no fixed standard for the size of subdivisions. I believe Fairfax County operates with four subdivisions. We and people with whom we consulted, felt that an optimum number would be in the neighborhood of 20,000 pupils. And 20,000 or that general neighborhood has been reached in all except subdivision six.

[A-169] Q Now, Doctor, the subdivision lines, do they vary depending upon whether it is high schools we are talking about or elementary school or middle schools? A No. Your subdivision lines for elementary, middle schools, or junior high schools, and high schools are all coterminous; that is, the subdivision one is the same for elementary, for middle school, and for high school.

Q All right.

Dr. Little, would you, with the Court's permission, please go over to the easel and generally describe the subdivision lines. A Mr. Little, I believe it would be helpful to the Court and others if they would look at, while I am doing this, at summary A beginning on page one of the plan. It is a computer print-out.

* * *

[A-170] The Court: A-1.

Mr. Little: The very first page.

The Court: Starts out Metropolitan School Subdivisions.

Mr. Gray: I am sorry. I thought he was going to start reading.

Mr. Rogers: Is this the same plan that you sent with your letters of May 4?

Mr. Little: That is right, yes, sir.

Mr. Rogers: No change?

Mr. Little: No changes since that time.

Mr. Rogers: Except you have something additional to the computer print-out?

By Mr. Little:

Q If you will proceed, Dr. Little, to show the basic subdivision lines of the six subdivisions and give within each subdivision the number of pupils and racial composition within those. A Subdivision one comprises an area of eastern and northern Henrico, the Varina area up to the Chickahominy, and dipping into Richmond's east end to gain its—most of its black population.

Q Excuse me, Doctor.

Which color lines represent which? Now, the [A-171] black lines— A The black lines are attendance areas within the subdivisions.

Q Excuse me. A The dotted orange lines are the subdivision lines.

Q You say attendance areas. These are the attendance area lines actually used by the county last year? A Last year, and they are the attendance area lines in Plan I that was submitted to this Court for the City of Richmond.

Q All right, sir. A This subdivision, if you will note in summary A-1, has a total of 18,123 pupils: 11,557 or 62.6

percent white, 6,766 or 37.3 percent black; giving you 18,000.

Subdivision two is the northern area of northern Henrico County, dipping down into the Highland Park area to gain its blacks and taking a wedge into the core of the City of Richmond. Here is a total of 20,059 pupils, the racial composition of 63.4 percent white and 36.5 percent black.

Now, the figures above that, the racial composition of the individual units with which we worked.

Q Now, by individual units, again, just for the sake of clarity, we previously mentioned you had to break it [A-172] down into five organizational structures. A Elementary means elementary. Six means the sixth grade. High means ten, eleven, and twelve. Nine means the ninth grade. And middle, grade seven and eight.

Q Go on to number three. A Subdivision three is the western Henrico County coming down into central Richmond, or a wedging into central Richmond, for the necessary blacks to bring about a viable racial mix.

Here there are 17,749 pupils, 64.7 percent white and 35.2 black. That comes down to the James River. And we have avoided as much river crossing as possible in delineating these subdivision lines. Wasn't possible in all instances however.

Subdivision four is south of the James River taking in the northernmost part of the annexed area and a certain portion of Chesterfield County.

This area by necessity had to cross the Jame River and the crossing is made where most bridges do exist for transportation purposes. And it goes over into Church Hill to gain the necessary blacks to bring about the viable racial mix of 62.7 to 37.2 with a total pupil population of 19,086 pupils.

Subdivision five is northern Chesterfield [A-173] County, taking in the bulk of the annexed area and again—the old part of Richmond Petersburg Pike section of old Richmond—and again needing to cross the James River in the proximity of the bridges to east end. That subdivision would have 19,594 pupils, 70 percent white and 30 percent black.

We come now to subdivision six. And subdivision six is composed of southern Chesterfield County, and here within this area—and your demographic map will show this—that there is over this area a high percent of that has a 20 percent black population residing therein. To have brought this up to 20 percent black would have necessitated the bussing that we considered unnecessary in this, and furthermore there were other matters or areas of concern and interest program-wise. Different characteristics, more rural characteristics of this area. So here we only have 9,387 pupils with a ratio of 81.6 white and 18.3 black.

So again, subdivision one, subdivision two, subdivision three, subdivision four, subdivision five, and this large area, subdivision six.

Q Dr. Little, with respect to the plan that we are going to get into, did or did not you treat subdivision six, though, as you did all the other subdivisions? A We have treated subdivision six as we have treated all of the others in this plan.

[A-174] I would, however, recommend that consideration be given to some modification of this if that plan were to be accepted, or a portion thereof, because in most of the schools, most of the schools already are well, pretty well, desegregated; and I would suggest that that be handled more on a basis of breaking down the all-black and all-white schools and maybe get away from some transpor-

tation, though transportation is only a limited factor in it now.

Q In subdivision six, though, there is at least one all-black school and one all-white school as of 1970-'71? A As of the data that was available, yes, sir.

Q All right, sir.

The Court: Do you need Dr. Little at the easel?

Mr. Little: For one more moment, if you don't mind.

The Court: That is all right. I didn't know whether you were finished.

By Mr. Little:

Q Well, in drawing your subdivision lines, Doctor, was any effort made to have them coterminous with the existing attendance lines? A An effort was made, but it was not possible because your high school lines and your elementary lines and [A-175] your middle school lines are not coterminous or congruent or whatever the terminology is for that.

We did attempt to follow an attendance line, whether it may be an elementary or junior high school or senior high school line, we have attempted to follow it as much as is humanly possible to avoid cutting across attendance area lines. There is some cutting across. There is some division of attendance area, of subdivision line area, at all levels.

Q All right, sir.

You may return to your seat, with the Court's permission.

Now, Dr. Little, under this plan will all of the students who live within an attendance subdivision attend a school which is physically located within that particular subdivision? A No.

Q Of the one hundred and approximately five or seven thousand students involved, have you calculated how many children will not go to schools located within their particular subdivision? A Yes, sir. I have calculated this, Mr. Little.

Just one minute, if I can find it.

In the neighborhood of 7,668.

[A-176] Q 7,668 is the total number of pupils who will not attend schools within the subdivision in which they live, is that right? A That is correct. But they will attend a school that is contiguous to the subdivision, and they will attend the school—they will attend the school whose attendance area has been cut by a subdivision line.

Q All right, sir.

Would you—will there be any instances of where children will be attending schools in a subdivision which is not contiguous to the one in which they live? A No, there will be no instances where pupils will be assigned to schools not only that are contiguous to the subdivision but contiguous to the attendance area.

Q All right, sir.

Now, Doctor, if we can come to a School Board Exhibit which is the computer print-out of the plan, Exhibit 63, I will ask you to skip over the summary schedules and come to page one entitled, "Metropolitan School Division, Elementary." In other words, there are four summaries at the beginning of the book. Summary A, summary B, summary C, summary D. And I am drawing your attention to the first page of the elementary system. A Page one.

[A-177] Q All right, sir. A Page one—

Q Wait just a moment.

The Court: Let me be sure counsel all have what we are talking about.

By Mr. Little:

Q Now, from page one on, how is the balance of the book broken down as between the five grade structures that you have previously testified to? In other words, what pages relate to the elementary? What pages relate to the sixth grade? What pages relate to the—so forth? A Page one through page 41 deals with the elementary grades K through five.

Page 42 through page 79—

Q 69 or 79, sir? A 69, I beg your pardon—deals with the sixth grade.

Page 70 through 96 deals with grades seven and eight.

Page 97 through page 124 deals with the ninth grade.

Page 125 through the balance, I believe page 151, deals with the senior high school or grades ten, eleven and twelve.

[A-178] Q All right, Doctor. Then let's come back to page one, and if the Court has no objection, I will just propose to go through the elementary plan.

The Court: Do it your way.

By Mr. Little:

Q All right, sir.

Now, would you explain page one column by column for the Court? A Page one is a summary of elementary pupils in all six subdivisions. This is totaling 32,513 white students, which represents 65.1 percent, and 17,430 black pupils, which represents 34.9 percent, or a total elementary students being dealt with in this plan grades K through five of 49,943 pupils.

There is a building capacity for elementary pupils, an assigned building capacity, for 56,706. Therefore, the three systems are utilizing their elementary buildings to a percent factor of 88.073.

Subdivision one—that is the summary. I will go back to subdivision one. Subdivision one had 5,017 elementary pupils—and I will truncate here, Mr. Little—which will give us 59.8 percent black students, 3,370 or 40.18 or a total of 8,387, with a building capacity of 9.937, or a building utilization factor of 84.401.

Q So the racial composition in subdistrict one [A-179] at the elementary level would be 40.181 black, balance white; is that right? A That is correct.

Q And the same holds true for—you can take each subdivision below that and see the racial mix in each subdivision at the elementary level? A At the elementary level, the total number of students, the building capacity, and you will note the last column is a utilization factor for that particular subdivision, the percent of utilization of the building space.

Q Now, the seventh column is entitled, "Building Capacity." Would you explain what—how you arrived at the figures represented there? Is that a rated capacity or is that—what is it? A Well, we were working to an end—and in many of the schools we had to break up the capacity between the first five grades and the sixth grade, and we had to break it into the components to be comparable. We were working to an end that no building would be expected to house more pupils than its rated capacity or more pupils than it had demonstrated the preceding year, or last September, than it was able to—that it was able to accommodate.

So we were working with two factors there. One was the rated capacity of the building. The other, or [A-180] what the building had previously housed, where it was needed to do that.

So we will come back later in summary and put this back together. And I think in only four schools out of the total have we exceeded one of those two, and that is only nominal exceeding.

Q I see.

All right, sir. If you will turn to page two, then, a detailed breakdown of the elementary schools K through five in subdivision one. And would you take a school and go through, describing what each in there represents? A All right.

Let's take J. L. Adams, which is the first school there. J. L. Adams had enrolled, excluding special education children, last September 518 whites and 90 blacks.

Now, if someone is going back and checking that, don't forget, as I did, that the sixth grade has been pulled out; and it is hard to reconcile it until you add the sixth grade back into the original figures.

So in K through five, or I believe first grade through five in this instance, 518 whites and 90 blacks, an assigned building capacity of 675. We are working here to a utilization factor to get uniform utilization out of all the buildings in the subdivision, we will be working in this [A-181] subdivision to a building utilization factor of 84.401.

Now, when we adjust to that building utilization factor and when we adjust to the viable racial mix that we have in this subdivision—

Q And what is the mix in that subdivision? A 59.818 and 40.181.

So when we work to the building utilization factor and when we work to the racial composition that we are striving for, we adjust that pupil population there to 341 whites and 229 blacks. And to gain that, 177 whites need to be bussed out and 139 blacks need to be bussed in.

Now, we have busses here. And this is simply an estimate of the number of busloads of youngsters that will need to be transported. And at this time we were looking for the magnitude of the transportation. We have rounded on a half busload. If there were enough to go to make a half busload or more, we have counted it a full busload. If there were less than that, we have dropped it. It does work out, and we have worked out later transportation studies that are precise. But let's treat this purely as estimate.

Q This is preliminary transportation? A This is purely transportation, yes, and this is not final as far as transportation is concerned.

Q So that means, then, on J. L. Adams then [A-182] there would have to be exchanged out of that school 177 white students, which would require three busses, three busloads.

Now, how do you figure busload capacity? A In this instance we figured it on 66 for elementary.

Q And then the blacks would have to be bussed in would be 139 or two busloads, correct? A Two busloads, yes, sir.

Q All right, sir.

Now, pages three through seven again deal, do they not, Doctor, with elementary K through five, for the balance of the subdivisions? In other words, page two is subdivision one. Page three is subdivision two, and so forth, right? A

Yes. And the only difference is we are working with different parameters here. We are working to a utilization factor in subdivision two of 94.971 percent, and we are working in subdivision two to a racial composition of 60.699 white and 39.300 black.

Q And what is the racial composition toward which you are working in subdivision three? A Subdivision three we are working toward 60.034 white, 38.965 black. And here we are working to a low building utilization factor of 80.738.

[A-183] Q That simply means in subdivision three you had more available spaces for K through five than you had in the previous subdivisions? A That is correct, yes, sir.

Q Now, what was the racial composition toward which you were working in subdivision four, sir? A 62—

Q On page five. A 62.389 white, 37.610 black.

Q All right, sir. A Building utilization factor of 85.949.

Q All right, sir.

Now, how about subdivision five? A Subdivision five. Building utilization factor of 90.572 with a racial composition of 70.978 white and 29.021 black.

Q And then finally, sir, on page seven. A Subdivision six, we are working to a building utilization of 85.255 and to a racial composition of 82.909 white and 17.090 black.

Q All right, sir.

Now, Dr. Little, I would like to next get you to deal with pages eight through 28 in dealing with the summary of bussing possibilities.

[A-184] Mr. Little: But, may it please the Court, I wonder if Dr. Little could take a slight break?

The Court: Do you want a brief recess?

Mr. Little: Yes, sir.

The Court: All right, we will take a brief recess.

(The witness stood aside.)

(A recess was taken at 4:15 to reconvene at 4:25.)

(The witness resumed the stand.)

By Mr. Little:

Q Dr. Little, we are on page eight. Pages eight through eleven deal—are entitled "Summary of Bussing Possibilities, Elementary, for Subdivision One." Summary of bussing possibilities.

Now, let me ask you this at the beginning: Does this mean that J. L. Adams will send students to Fairfield, Fairmount, and Highland Park, necessarily? A No, sir.

Q What is this, now? A This means that J. L. Adams has students to bus out, and they are elementary white pupils. And Whitcomb Court, Central Gardens, Fairfield Court, Fairmount, and Highland Park needs those white students to bring about its [A-185] viable racial mix.

Now, if you will go back, Mr. Little, to page two and again let's look at J. L. Adams. J. L. Adams had 177 whites to bus out. And it needed 139 blacks. Now, J. L. Adams could send those students—there are five schools to which those students could be sent.

Q Within the same subdivision? A Within the same subdivision. Whitcomb Court, Central Gardens, Fairfield Court, Fairmount, and Highland Park.

Now, Baker, the second school represented there, needs to bus out 128 and bus in 119. But we are dealing here with only the bussing out, so Baker has five schools, same five schools, in the subdivision that could receive those students and needs them to bring on viable racial mix.

The Court: So we get the record straight, Dr. Little—I will try not to interrupt counsel again—what was your criteria for viable racial mix?

You used that phrase, and I wondered what you meant by it.

The Witness: Viable racial mix, I mean that, in my opinion, it is a racial mix that is well enough established that it will continue to prosper. It will be a desirable [A-186] reasonable racial mix for educational purposes, as well as meeting the judicial requirements in that.

Generally the parameter ranges from 20 to 40 percent in each school. We have not quite attained that in subdivision six, because I believe there are some instances around 17 percent and in one instance here we are dealing with maybe 40.—well, in subdivision one 40.18. But the general range we are shooting for was 20 to 40 percent in each and every school and in each and every subdivision.

The Court: All right, sir.

By Mr. Little:

Q All right, sir.

You were down to, I believe, Central Gardens. A Yes. Let's take Central Gardens through this thing. Central Gardens last September had 20 whites and 539 blacks.

Q That is in Henrico, is it not? A Yes. Had a building capacity of 675. We are working for building utilization of 84.4. When we adjust that we adjust it to 31—341 whites

and 229 blacks. So Central Gardens needed to bus out 310 students.

Now, if you will go to page—

Q 310 blacks, right? Central Gardens had to bus out 310 blacks? [A-187] A 310 blacks, yes, sir.

If you go to page eight, Central Gardens has twelve schools that can receive its excess black students. They are Sandston, Seven Pines, Varina, J. L. Adams, Baker, Chamberlayne, Fair Oaks, Glen Lea, Highland Springs, Laburnum, Montrose, and Ratcliffe.

Now, the distance as represented here is mileage from school to school.

Q How was that mileage actually computed, Doctor? A The mileage was computed by calibrated odometer on a vehicle run a normal route. Normal, not necessarily as a bus route. The normal, vehicular route between school to school.

Q All right, sir.

Now, if you will turn to page eleven—let me go back a minute, then.

Eight through eleven simply takes each elementary school in subdivision one and gives all of the bussing possibilities for all of those schools that have to send students? A That is correct.

Q All right.

Then coming to page eleven, if you will; sir. [A-188] A That is a summary of possible combinations of 115. There is an average distance, average possible distance, of 6.6 miles.

Q In other words, that is the average distance measured school to school for all of the— A Bussing possibilities.

Q Right. In subdivision one. A Subdivision one.

Q At the elementary level. A At the elementary level, yes, sir.

Q So that would give you an average distance of 6.6 miles? A That is correct, sir. That figure is used later on.

Q All right, sir.

Now, pages 12 through 15, then, contain all of the bussing possibilities for elementary schools in subdivision two, is that not correct? A That is correct.

Q And the average distance between the sending and receiving schools at the elementary level? A Shown on page 15, is 7.3.

Q .3 miles? [A-189] A .3 miles. That is the average distance of bussing possibilities.

Q That is right.

Now, sir, on page 16, 17, and 18 we are dealing with subdivision three, still on the elementary level. And on page 18 the average distance between possible sending and receiving schools is what? A 7.9.

Q Now, the same data for subdivision four is found on pages 19, 20, 21, and 22, and the average distance between sending and receiving schools is what, sir? A 8.7 miles.

Q Similarly for subdivision five, pages 23 through 26, the average distance between—again, at the elementary level—is what? A 7.5 miles.

Q Now, on subdivision six, the southern portion of Chesterfield County, the same data is found on page 27. And what is the average distance between sending and receiving schools in that? A 17.3 miles.

Q And why is it so much larger than in all of the other subdivisions? A The very nature of the area and sparsity of [A-190] population or lack of density, or low density population.

Q All right, sir.

Now, I draw your attention to Schedule of Busses on page 28 for subdivision one. Now, this is where the busses under this plan are scheduled to actually go, not possibilities, but actually go; is that correct? A That is correct, yes, sir.

Q Now, in subdivision one we were working on an average distance between sending and receiving schools of 6.26, right? A 6.6, I believe, sir.

Q All right, sir.

Now, would you explain to the Court, then, the columns and the significance of page 28 as applied to subdivision one, elementary level? A The computer was given instructions to choose, starting with that 6.6 and to make the selections of schools as near that 6.6 as possible. Computer was told that it would go 50 percent over that average possibility or 50 percent under. That is, in subdivision one it was given a range of 3.3 miles to 9.9 miles. And any time it either went over or under, it was to indicate to us by a flag —a double asterisk, as you will find on this page—that it has gone over or under.

So really the parameter here was 50 percent [A-191] over and 50 percent under the average bussing possibility distance.

Q All right, sir.

Then coming to page 28, the actual distance that the children would be transported ranges from what to what in subdivision one? A In subdivision one we go to 9.9.

Q That is the longest distance? A That is the longest distance.

Q And the shortest distance? A I believe is 2.5.

Q Now, on this you mentioned the fact that if the distance was either 50 percent more or less than the average distance, there would be a flag. Is that the last column on the page? A That is the last column. You will note that Ratcliffe to Fairmount is 3.1. That is under the parameter. But two busloads of whites. And it is flagged.

The next one, I believe, is Glen Lea to Whitcomb Court, 2.9 miles, two busloads of whites, and that is 2.9 there.

Then the last two, Whitcomb Court to Glen Lea and Whitcomb Court to Ratcliffe, 2.9 and 2.4, that is the reversal of three and two busloads respectively. All in that [A-192] are under the 50 percent plus or minus the computer was given.

Q All right, Doctor.

To explain this a little further, would you turn back to page ten, keeping your finger in page 28, and go back to page ten and look at Varina and Annex and tie in page ten with page 28, if you will, sir. A Page ten?

Q Yes, sir. I believe that is right. A Varina and Annex had five options. Varina could go to Whitcomb Court, which was 9.9 miles; it could go to Central Gardens, 13.8; it could go to Fairfield, 11.3; it could go to Fairmount, 11.8; or to Highland Park, 13.6.

The computer automatically took the closest, which was 9.9 and just within the bounds of this prerogative.

Q Now, coming to the bottom of page 28, would you explain the legends that are in there, sir? For instance, number of unscheduled busses—excuse me. A In your

rounding on half load, less than half load—your busses do not always come out exactly, so there is one bus that—and again, this was for estimate and this was for our information. We would not propose that those kids be left riding around on that bus forever, but there could be an administrative judgment made as to whether you take a part load or not.

[A-193] Q In other words, if you had eight students—A If you had eight students you would decide whether the influence on the racial, the viable racial mix, would be significant enough to not take them or to take them. But again, this whole transportation thing, Mr. Little, is an estimate.

Q At this stage. A At this stage. We are coming back later with precise estimates on transportation.

Q All right, sir. A Now, busses not within equidistance, there are nine there, as is indicated from summary, and we have indicated those by asterisk. They will add up, I hope, to nine busses.

Q Well, we can go through, in other words at Ratcliffe where the distance was under, that was flagged, 3.1, there were two busloads of whites, right? A Yes.

Q And then you add that to the two busloads of whites at Whitcomb Court, right? A Yes.

Q That is four. And three busloads of blacks at Glen Lea, right? A Yes.

Q And two busloads of blacks at Whitcomb Court. [A-194] So that is a total of nine; that is where that figure came from? A That is for that figure. And there are 52 busses in that subdivision.

Q When you say busses, you are really saying— A Busloads.

Q —busloads.

Going over to page 29, it does the same thing with subdivision two at the elementary level; that is, actually makes the assignments of pupils showing the distance school to school and number of pupils involved, is that correct? A That is correct, yes, sir.

Q Page 30 is subdivision three, page 31 is for subdivision four, the same page five for subdivision five, page six for subdivision six. A Page 33 for subdivision six.

Q Beg your pardon. That is right, sir.

Now, Doctor, the final section for the elementary schools begins on page 63. A May I say before you get to that, as to page 34 and 35 is just a summary of those unscheduled busses, so we knew where they were. I don't think it is significant.

Q But these students would be manually assigned as opposed— [A-195] A If they were used as a bussing plan.

Q Yes. All right, sir.

Then on page 36— A Yes, sir.

Q —would you explain that table for us, sir? A Well, we are getting down now to the critical issue of how you put—how you assign pupils to schools and how you select the students that are to be assigned.

There are a number of techniques with which this can be done. As you know, we have strip zoning to a large extent in the City of Richmond. That is not feasible under this arrangement because of the distances involved and so forth.

A second technique is pairing. Well, you would have too much split pairing to have a manageable plan in this type of operation.

There are only two logical methods, in my opinion, to make this assignment; and one is by island zones and the second is by lottery of some form.

Q Dr. Little, let me interrupt you just a moment. To illustrate the lottery let's take if I may, Your Honor, take "A" attendance area. Let's assume that this is the attendance area where my finger is running. Let's just assume there are 600 students in there at the grade level involved and that they [A-196] were spread equally over the attendance area, which they aren't, but assume they would be by island zoning. Do you mean just cutting off one third the section and say this group will be exchanged and the others will stay? That is, basically cutting off a third or having more than one zone, forgetting about the socio-economic level or other things, whatever it might be? That is how you are defining your island zoning? A Defining island zoning as a portion of that attendance area, children residing within that portion would be the ones which would be exchanged.

Q From your experience as an educator, what are some of the advantages and disadvantages of island zoning as a method of selection? A Well, island zoning gives you a more compact transportation arrangement. You would not have to run all over the area. Another advantage to island zoning is a matter of neighbor equity, that is, the same thing happening to my neighbor's child that is happening to my child.

Now, on the other side of it, the disadvantages to island zoning, is the difficulty in cutting these zones and the

adjusting of these zones and the administration of it and the selection of the zones. Someone has to—someone would have to make the selection.

Q In other words, that is a subjective decision [A-197] as to which group in this particular attendance zone would have to move? A That would be one. There is another objection to it. And I think it is a serious objection, is that island zoning tends to stigmatize property values to the point that people would not want to move into an area where they knew that their children were going to be bussed or transported. Or some people would object to that. So I think it would have a negative effect on property values.

Now, there is also a problem that we are encountering as we are in the pairing of schools. We are transporting black children to formerly all-black schools in some instances and white children to some formerly white schools because we are transporting all of a grade level. And here you would be transporting all of an area, and if there were any mixed housing in that, you would be transporting children that you really don't need to transport to gain your racial mix.

So I think those are the advantages and disadvantages to it.

Now, by lottery there are some disadvantages. I have mentioned one, and that is that you have to provide much wider transportation because the kids you are moving will be living throughout the entire attendance area.

[A-198] There is another—well, that is the main disadvantage to lottery. I guess the impersonality of it might be considered by some people as an objection. Personally to me it is strictly objective and there is no subjective judgment, and I think that is a merit rather than a demerit for a lottery plan of transportation.

Q But here— A But here there is a great advantage in a lottery, and the way this plan is prepared it leaves children in their home school unless they are needed for—to bring about—need to be taken out to bring about your viable racial mix.

Now, under the plan that is proposed, by lottery any white parent could move to a black neighborhood and be assured that his child would go to that neighborhood school and that he would not be bussed.

Conversely, any white person could move to a black neighborhood—

Q You mean any black— A Any black person could move to a white neighborhood and be assured that his child would attend a neighborhood school and would not be bussed.

So I think this plan as devised has merit in its encouragement of open housing.

[A-199] Q Coming back to the lottery concept. You have suggested—of course, a lottery could be any number of different type of lotteries. You suggested a birthday. Have you done enough checking to think that that is realistic in the sense of statistically sound as between blacks and whites and so forth? A My investigation has caused me to believe, or our research so indicates, that there is no significant difference in the number of children that are born on any day of the year. And that there is no significant difference to the number of children that are born between the races on any day of the year. That there is no pattern of that.

However, I think the question that you asked, Mr. Little, is academic, because in choosing a number of birthdays the number of birthdays you choose is very flexible. If you

have got too many children, you cut off birthdays. If you don't get enough, you add birthdays until you do get it. So it is feasible, and I think that question is strictly academic.

Q All right.

Well, with that background, Doctor, would you go back to page 36 and look at J. L. Adams and go through that for the Court to see how you are just suggesting this as a plan and a method of selecting students. A There are—I enumerated all the plans I [A-200] know. Someone may be able to work out a better one. This is a plan that is a preferable plan as far as I am concerned. And it is only a plan, and any improvement or—would be appreciated.

We are back to J. L. Adams here. There is some repeat information here, and it is needed.

You will recall back originally J. L. Adams had 518 white and 90 black. We had a building capacity we were working to and utilization factor we were working to, came out with a total of 177 whites needed to be bussed out, or three busloads.

Now, that 177 white is 34.1 percent of the 518 whites in that school. If you apply that 34.1 percent to 365 days in the year, you need 124 birthdays to yield you the 177 white children for that attendance area that need to be transported to bring about your racial mix.

Q And the same approach was used on all the other schools in subdivision one of the elementary level? A That is correct.

Q Coming back to this just to follow through, to give your views to the Court on it, would it be your recommendation that the birthdays be done on consecutive or

random basis, something similar to the selection for draft, or on a consecutive basis? [A-201] A Well, I think you would have to have a lottery in each attendance area that has children to exchange. And it would be my suggestion that you choose a first day and let them run consecutive for the number of days you want. However, the other way could be done. I think it would be more cumbersome administratively to do it the other way.

Q What would be your recommendation with respect to the frequency of selection? Is this something that a child has to go through each year in his school career, or how often would he be subject to this method of selection? A I think the child would be subjected one time to it at each grade level.

Q At each grade level? A I mean not each grade level, each school level that is serving him. When he finishes the grades in that school to move on to another school, I think again he would come into the lottery. But I would hope once this is established with viable racial mix that the children could remain in the school until they completed the grades in that school. And I see no reason with the stability of the white-black population over the last 20 or 30 years in the total metropolitan area why once you are stabilized you would not remain stabilized.

* * *

[B-4] PROCEEDINGS

(August 17, 1971) (Tuesday at 10:00)

The Clerk: 3353-R, Carolyn Bradley, et al. versus the School Board, City of Richmond, Virginia, et al.

Case continued from yesterday.

[B-5] * * *

(Dr. Little resumed the stand.)

Direct Examination (Continued)

By Mr. Little:

[B-14] * * *

Q Dr. Little, have you made a determination [B-15] of transportation needs under the plan which you have presented? A Yes, I have.

Q Now, coming back to summary A, just for a moment, I think you testified yesterday that your initial study was simply to determine an approximation of the number of busloads that would be required? Is that not true? A Would be required for exchange students, Mr. Little.

Q All right. A It did not involve any transportation from home to school other than ones that would be transported out of the normal.

Q So there can't be any question, how are you defining exchanged pupils? Are they not synonymous with the pupils bussed out as shown in the plan? A That is correct.

Q So that is the definition that you are using of exchanged pupils? A That is correct.

Q But that is only one feature of transportation under the plan. You also had to consider the transportation required for those students such as [B-16] in Henrico and Chesterfield who would still go to the same schools they are going to but would have to be transported from home to school? A That is correct.

Q And in Richmond under Plan III the ones who will be transported from home to school within this, are within the same school? A Correct.

Q All right, sir.

Now, following your rough computation as outlined in the plan here, what additional study did you do? A We had a task of setting up a transportation system from scratch for Plan III which we will be operating in the City of Richmond come September. In conjunction with that we learned a number of things about transportation that helped us in the calculation of a transportation problem which was involved in this.

The Court will recall that in our testimony in reference to Plan III that we estimated on the basis of two openings of school and a stagger of two opening times of school.

We have gone into it extensively, and we find that in Plan III that we can stagger on a three [B-17] period basis and get a much higher utilization out of our equipment than we had originally anticipated. By having three staggered openings you can cut down the time between your stagger, and you can get more vehicles operating and subsequently operate as shorter bus runs than we originally had anticipated from home to school.

So we find that in the vehicles that we indicated we would need for the operation of Plan III that we are going to have somewhere in the neighborhood of 20 to 30 excess pieces of equipment that we have purchased.

Q Doctor, I draw your attention to Plaintiffs' Exhibit 7, I mean, beg your pardon, School Board Exhibit 79, entitled "Plan III, City of Richmond Bussing Times and Distances," copies of which were passed to all counsel yesterday, I believe.

[B-18] * * *

By Mr. Little:

Q Dr. Little, under Plan III, which is to be implemented a week from Monday in Richmond, would you show or explain Exhibit Number 79 with respect to the schools, the school distance from the paired school-to-school time? Explain those, please, sir. A Well, this exhibit shows the mileage, the calibrated odometer mileage from school to school and the time of a run from school to school. Broad Rock to Whitcomb Court 7.5 miles, 24-minute run.

[B-19] Fisher to Carver is 10.4 miles and 25 minutes.

Francis to Fairmont, [*sic*] 8.2 miles, 25-minute run.

Greene to Fairfield, 7.2 miles, and a 26-minute run.

Patrick Henry to Franklin, which are contiguously paired schools, seven-tenths of a mile or four-minute run.

Lee to Amelia, again a contiguously paired schools, 2.6 miles or a 10-minute run.

Munford to Highland Park, 6.4 miles or 18-minute run.

Reid to Woodville, 7.8 miles, a 26-minute run.

Reid to Mason and Bowler, 7.9 miles or a 29-minute run.

Southampton to Baker, 9.1 miles, 25-minute run.

Summer Hill to Ruffin Road and Chimborazo—Summer Hill and Ruffin Road to Chimborazo, 7.8 miles, 26-minute run.

Westhampton to Norrell, 6.9 miles and 18-minute run.

[B-20] The Court: I don't think—is there any need to go through all of these? It is self-explanatory, isn't it, Mr. Little, unless you have some particular reason.

By Mr. Little:

Q Prior to actually developing the actual bus routes to implement Plan III with respect to these paired schools, did you make estimates as to the times necessary to transport the pupils before you actually laid out the routes? A Yes, sir, we made estimates of time.

Q All right, sir.

And was that based on the fact that at that time all you had was the school-to-school distance, is that right? A That is correct.

Q And the school-to-school time? A That is correct.

Q So you had to make an adjustment when you set up the route, whether it would increase or decrease or by how much? A That is correct.

Q All right, sir. A Again we did that by running with vehicles.

[B-21] Q Have you now prepared in detail the routes for Plan III? A We have, yes, sir.

Q Would you describe some of the routes, and I refer you to what School Board Exhibit 80, entitled Plan III City of Richmond, Comparison of Bussing Times. It is a two-page document.

The Court: I have it, thank you.

By Mr. Little:

Q Would you just illustrate what this exhibit shows? A Well, this exhibit shows the number of trips that are being made.

Now, this is the number of trips of the crossbus youngsters not—we pick some within the annexed area that will have be transported to school, but this is the number of trips, the longest scheduled time, the shortest scheduled time, and the average scheduled time of the routes that we expect to start running on the opening day of school.

May I, Mr. Little, here point out a reversal on this. Fisher to Carver runs 35 minutes all the way across. Carver to Fisher runs 40 minutes across. That is a reversal. It should be turned around.

[B-22] Q Fisher to Carver should be 40 minutes? A Fisher to Carver should be 40 minutes and Carver to Fisher be 35 minutes.

Q While you are on that point I think that you will see throughout the exhibit, Dr. Little, that even between the same two schools there is a difference in time. For instance it takes 40 minutes to go from Fisher to Carver but only 35 from Carver to Fisher. How did you explain that, sir? A Well, in the Fisher area you have longer runs to pick up the children to get them, where in Carver, in the dense population you pick up a busload in one or two stops, two or three stops. That is generally the principle involved there.

Q All right, sir.

I think this exhibit will speak for itself, but I would like to ask you two other things.

In computing the average route time and the times on here as the footnote indicates, was any adjustment made by virtue of the fact that when these routes were actually run schools were not in session? A Yes. I think there was added ten minutes.

Q Ten minutes or ten percent? A Ten percent, I beg your pardon. Ten [B-23] percent of the time to each

run. Because they were run when school was not in session. They were run at the hour that they will be run but school not being in session. We added ten percent.

Q From looking at the exhibit it appears that the longest run time is 50 minutes and that the shortest is 15, is that not true? A Yes. And this schedule provides that in all instances the kids will be at school ten minutes prior to the opening of school, I believe, to give that much leeway for being on time.

Q Now, how do these actual route times now that you have actually worked out the physical routes and run the routes, how did they compare for Plan III with your estimates that you had made prior to establishing the routes? A They were in line. In some instances they are lower.

The Court: Substantially lower, weren't they?

The Witness: In some instances lower, yes, sir.

By Mr. Little:

Q Yes, sir.

[B-24] Are the distances between sending and receiving schools under the Metropolitan Plan comparable to the distances that you were working with under Plan III in Richmond, Doctor? A Yes, they were.

Q Would you expand on that a little bit breaking down the distinction between subdivision one through five and subdivision six? A Well, subdivisions one through five your shortest average distances. The shortest distances involved. You recall on the elementary level that the average distance for elementary in subdivision one was 6.6 miles. Our range was up to 9.9 miles in subdivision one. That carries pretty favorably throughout all except subdivision six. Again

in subdivision six with the broad expanse and the sparsity of population your distances there are greater, but of course youngsters are being transported there now at considerably greater distances than other parts of the metropolitan area.

Q Right, sir.

Now, do these distances also compare favorably with the times and distances under the Foster Plan that was presented to this Court earlier in the hearing? And I refer you to School Board Exhibit 81 [B-25] entitled, "Plaintiffs Plan for Richmond City." A Yes, sir. The figures, I believe, speak for themselves.

Q The range and mileage? A The range and mileage and the time that is involved here has been found by this Court to be reasonable. It is represented by this exhibit.

Q Now, Dr. Little, under the Metropolitan Plan that you have testified to thus far, have you made any calculations as to the number of children who will be transported under this plan? A Yes, I have.

Q Would you go into that, please, sir? A There are approximately 36,000 children to be exchanged under this program as represented by this plan that we have here.

Q Using exchange as you have previously defined it this morning? A Using exchange as I have previously defined it.

Approximately 42,000 additional children will need to be transported under this plan from home to school giving an aggregate of 78,000 youngsters to be transported.

[B-26] Q Now, Doctor, you mentioned that there would be approximately 35 or 36,000 students to be exchanged. Have you made a computation as to whether the burden

falls on the white children primarily or the black children for those 36,000? A It is almost evenly divided. Approximately a thousand more white pupils will be exchanged than black pupils.

Q Now, how can we compare the number of pupils who will be either transported from home to school under the Metropolitan Plan or would be exchanged under the Metropolitan Plan with the number of pupils presently being transported by Richmond, Henrico, and the City of Richmond?

The Court: Richmond, Henrico, and the City of Richmond?

Mr. Little: I beg your pardon. Chesterfield.

The Witness: The three political—

By Mr. Little:

Q Three political subdivisions? A That calculation is difficult to make because we were not—we did not have a report of the average number of students that the counties normally [B-27] report. They have not reported to the State Board of Education on their average.

Q For last year? A For last year.

Q That is normally not available until, say, November, but they might have that information now, don't you think? A I would assume so.

Q Right. A However, based on interrogatory answers last year for a specific day of operation, Chesterfield was transporting approximately 24,000 pupils. Henrico was transporting approximately 25,000 pupils.

Now, under Plan III for the City of Richmond, we are estimating a transportation of 21,000 students which, as-

suming the county transports the same number, which I am sure it will probably transport more, but still we are dealing with relatively static figures, that will be an aggregate of 68,000 being transported. The plan is proposing around 78,000 pupils, or an additional 10,000 pupils.

Q Would you say that this additional 10,000 would be a low estimate or a high estimate or what? Do you think, in other words, that three political [B-28] subdivisions are in fact transporting 68,000, or perhaps more without the Metropolitan Plan? A I think they will be transporting probably more than that.

Q All right.

Dr. Little, how about the number of busses necessary for this plan? Have you made a study to determine whether or not the present equipment owned by the three political subdivisions, or at least on order, if not delivered, would be adequate to handle all of the transportation envisioned under the Metropolitan Plan? A I have.

Q Would you go into that with the Court, sir? A Well, calculating here, or recalculated on this not to drop a half busload or to pick up a half load, but this is transporting all pupils. I am advised by my routing technicians that it can be done by serving more than one school with a vehicle where it is low. We have calculated here on the basis of 66 elementary pupils and 44 secondary pupils being transported on each vehicle.

Q Doctor, stop right there. Many times we [B-29] have heard that elementary level you calculate on the basis of 66 and 50 at the secondary. I think the Richmond School Board had that. A That was our original. However, we have scheduled this—what we are doing under Plan III, actually,

is on 44. The reason for that is that there are 22 seats in a standard bus. You can get three elementary to a seat but two high school. Well, on the 50, I was assuming there would be some small high school and you could do it. The routing people tell me it is not advisable to attempt to schedule on 50, but schedule on the actual capacity of 44.

So we have scheduled on 44. This estimate is based on 44 for the secondary.

Now, we are estimating here a 90 percent utilization factor or load factor.

Q Not utilization of bus, but load factor? A Load factor. We are estimating the use of all busses for a three-schedule opening in all the subdivisions except subdivision six with an interval of 45 minutes between the opening hours of the three levels of school and in subdivision six for two openings with an interval of one hour.

Q So your basis is the same as under Plan [B-30] III in Richmond in the sense that it is predicated on staggered openings, three staggered openings? A Predicated on three staggered openings.

Q With a maximum between openings of 45 minutes? A With 45 minutes. In subdivision six two openings with an hour.

Q With a maximum of one hour? A Correct.

Q Correct. All right.

Using that approach, then, how many busses, 66-passenger busses, will be needed to handle all of the transportation under the Metropolitan Plan? A 524 excluding special education.

Q All right, sir.

Have you made a determination as to how many busses are on hand within the three systems for this coming year when all deliveries are made? A Assuming Henrico and Chesterfield County have replaced or still have the same number that they reported in interrogatory there will be, along with what the City of Richmond owns, or the number that the City of Richmond owns and the 115 that are on order, there will be available 601 66-passenger vehicles and 54 [B-31] 36-passenger vehicles, making a total of 647 which, in my opinion, is sufficient to meet the 601 need of regular busses under this plan. 524 needed under this plan and to take care of special education as well as having sufficient spares.

Q All right, sir.

Now, in figuring this, have you made any consideration as to the adequacy of the present fleets of the three systems to handle transportation in connection with extracurricular activities?

The Court: Excuse me. So I get this straight in my mind. Did I understand you to say you needed 524 66—

The Witness: 524 66. There are 601 or will be 601 66's available, sir, plus 46 of the smaller capacity.

The Court: Well, now, are there additional needs for the secondary for the 44-passenger busses, or is this the total?

The Witness: This is the total. This is the grand total, sir.

The Court: All right.

By Mr. Little:

Q All right, sir. [B-32] A Based on 90 percent load factor for pupils and three runs, a minimum of three runs for each vehicle.

The Court: All right. Thank you, sir.

The Witness: Except in subdivision six, as you understand.

By Mr. Little:

Q Based on what you have done under Plan III, do you consider that 90 percent load factor with the three openings Richmond will have under Plan III, to be realistic? A I do. Yes, sir.

Q Do you feel that it is realistic to assume that you can get three runs out of the busses? A We have scheduled and are going into operation with three runs out of each vehicle.

Q All right, sir. A Back to your original question on extracurricular activities, it can be handled in a number of ways. The way we plan to handle it under Plan III, in the City of Richmond, our high schools will be closing at—

Q This is Richmond beginning in September under Plan III? [B-33] A —at 1:50. We can have vehicles back at the school at 4:00 o'clock. So as many students as desire can remain at school from 2:00 until 4:00 o'clock, and all of our fleet, or the majority of our fleet will be available to go back to the schools and take them home at 4:00 o'clock. So we are placing all of our extracurricular activities in our senior high schools after school and the students will have two hours any afternoon that he sees fit to remain at school to participate in the student activity of his choice. We are working out an arrangement for sponsors to remain at school with them until 4:00 o'clock until equipment is available.

Q Transportation will be provided under Plan III for extracurricular activities? A Yes. And it can be done under this by proper scheduling arrangements.

Q All right, sir.

Have you made a determination as to the maximum time that any student would be on a bus going from home to school under the Metropolitan Plan? A Yes. The maximum time would be one hour.

Q Where would that occur? A That would occur in subdivision six.

[B-34] Q How about with respect—that is the southern portion of Chesterfield? A Right.

Q How about subdivision one through five? A The maximum scheduled time would be 45 minutes under that with the possibility of an added ten minutes by your proper scheduling. There may be an instance or two where it will exceed 45 minutes by as much as ten minutes.

Q Doctor, based on just your own study, are you satisfield that some of the present routes in Henrico and Chesterfield are in excess of 45 minutes or an hour? A Yes, sir. According to information from interrogatories, a number are in excess of 45 minutes.

Q Doctor, one more question on this line. What, with your familiarity, what is involved with setting up such a plan? What is your best estimate as to the time required to implement the transportation feature of this plan? In other words, how much time would you have to develop your routes and to make your assignments and so forth? A Mr. Little, that would depend entirely upon how anxious the persons who were assigned the duties [B-35] were to do it.

and secondly, how much manpower that you would put behind it.

The best I can do is give an estimate based on what we had to do on Plan III. We have scheduled all routes, and remember we are beginning a transportation system from scratch because VTC was doing the bulk of our transportation last year, whereas transportation is an old thing with the counties, we have completely in a two-month period of time scheduled all of our transportation. The routes were released to the schools on yesterday, later to be published in the paper. In my opinion the same thing could be done in the counties about the same time, if you put three times as much manpower on it as we put on this one.

So my estimate would be, I would say, three months at the shortest. It should not in any instance take more than six months to implement this.

[B-36] * * *

Q Going back to one other question on transportation. When you were giving a maximum time under the proposed Metropolitan Plan, they were indeed maximums. That doesn't mean that all the children are going to be riding 45 minutes, does it? A No.

[B-37] Q Under Plan III we have been previously giving the maximum times. In some instances I think it gets up to as much as 50 minutes, but what are some of the shorter routes for Plan III for Richmond next year? Do you recall just what the shortest ones are? A No, I do not.

Q Would it be in the range of ten or 15 minutes? A Oh, yes. We will have any number of ten or 15-minute runs.

Q All right, sir.

Now, Dr. Little, coming again to the organization. What composition would you recommend or what type of school board would you recommend? I have asked you whether you preferred a single board as opposed to three separate boards as one. A Well, I think in the first place that the State law prescribes that where school systems are merged that they now be merged under a single Board of Education. I think that is educationally sound because if you are operating a single system you need at least a single master board for setting up a policy to get uniformity and the necessary controls.

Q Do you think that the creation of a single [B-38] board aside from the fact that it might be prescribed by statute would lead to greater efficiency, greater adhesiveness? A I think by all means.

Q What about the financing under this plan, Doctor? When we get down to operating costs, when we get down to capital expenditures, what is your proposal with respect to that? A Again, State law prescribes a formula for that and I think the formula is sound, that it be done on a per pupil basis with the political subdivision taking in its share based on the number of pupils it supplies to the Metropolitan system on a per pupil basis for operation and on a per pupil basis for capital outlay.

Q When you refer to State law, and I realize you are not an expert on law, Dr. Little—perhaps you are—but I don't think you qualified as one yet in this Court, I think you are referring to Article V of the statute beginning with Section 22-100.1, are you not? A Through 112, 100.12, yes, sir.

Q What about the title to property of all these school properties. Right now you have property [B-39] of the schools being held in different capacities. For instance in Richmond I think the City of Richmond holds it, not the School Board, and in the counties it is different somewhat. What do you recommend about the holding of title to all school properties and so forth? A I think all school property titles should be held by the Metropolitan School Board. I think the authority is there that it can be transferred.

Q All right sir. How about the—how would you—what recommendation would you have with respect to the selection of members for the major board? A Again within the section of the law that is set forth, which I think is sound. With the representation based on the population of the political subdivision participating. In this instance I would recommend—there is choice within the law as to numbers. In this instance I would recommend a nine-member board. If you will work out your population it would distribute them approximately, or real close, to a one-man one-vote basis. Two members of the board from Chesterfield County, three from Henrico, and four from the City of Richmond.

Q Doctor, in the implementation of any [B-40] metropolitan plan, from an educational standpoint, what do you think should be provided, if anything, with respect to assuring black representation throughout all levels of the administration, faculty, staff, as well as the pupils? A Well, we have set forth in this plan representation as far as pupils are concerned. We have not indicated within the plan any assignment of teachers; however, as an educator I think a viable racial mix of staff in a school is just as important as the student body itself, and I feel the same way toward the

administration, that there should be equal representation. It can be on the basis of prorating of the existing black teachers and black staff, or I would recommend that we move toward the representation of staff teaching administrative to nearer the pupil representation in the schools.

Q Do you mean it should not exceed that by any means? A No. I think again there should be leeway. The best person available for the job. But I think that the staffing always should keep in mind the racial composition of your staff.

Q Would it be your idea from an educational standpoint that you would only have black counselors for [B-41] black students or anything of that nature? A Oh, no. I think students need exposure to staff as much as they need exposure to one another in a quality educational program.

Q Now, in making these recommendations are you making them because you think the Court would require it, or do you believe it is educationally sound? A I think it is educationally sound.

Q Coming to your overall evaluation of the plan, Dr. Little, I wish you would summarize what, in your opinion, constitutes the merits of this plan, or any comparable Metropolitan Plan for the Richmond Metropolitan area? A We started out with some objectives to this plan. One of those was the injection of the component of a viable racial mix in each and every school to produce a quality education as a component of a quality education program. I believe this plan will provide the environment for it. Again, how it is implemented will have a lot to do with the quality of the education, but I think that this will create an environment for quality education with the component of

a viable racial mix in each and every school in the metropolitan school system.

[B-42] I think we started out with an objective to create and effective manageable, effective and manageable [*sic*] unit of operation. I think through the subdivision arrangement that that certainly can be and will be true. We started out with the objective of reasonable transportation within. I think this plan is predicated on a reasonable ground of transportation, as this Court has deemed reasonable distances and time for transportation.

Q Dr. Little, in the absence of the implementation of some form of Metropolitan Plan from an educational standpoint, as you look down the road for these three political subdivisions, do you think that if they are left separate and apart that there can be any realistic hope of meaningful integration within any of the three systems? A I do not. And I think my testimony of last June will bear that out. I don't think it can—I don't think that there is any possibility of a stable school system without some meaningful integration, particularly in Richmond, and I feel that the quality, the component of viable racial mixes is just as important for Henrico and Chesterfield County students as it is for the City of Richmond students.

Q Is it fair to say from an educational [B-43] standpoint you believe that in a biracial community that meaningful integration is an essential element of quality education? A I certainly feel so, yes, sir.

Q Doctor, with regard to the implementation of the entire plan, I previously questioned you about the time required for the implementation of the transportation features. Would you give the Court your views as to the time

required for the overall implementation of the plan, not just transportation but faculty, student assignments, and so forth? A Well, I will repeat my statement of a moment ago. I think the implementation of this will depend upon the effort and energy that is put forth to accomplish it; however, let's analyze that just briefly. The major jobs in the implementation of a plan similar to this, number one, is your transportation. I have already spoken to that point.

A second large job in the implementation of this is the assignment of teachers and the getting of teachers assigned in the proper place, proper qualifications and whatnot.

We last year upset the apple basket in two weeks and assigned or reassigned all of our teachers [B-44] in two weeks and made some mistakes by so doing, not getting the proper teacher, proper qualifications, in the proper location. I think that three to six months that this job can be done adequately.

A third job that must be done is, if lottery is used, or if island zones are used as your method of assignment of pupils, I believe that within the three to six month range of time that that job either way can be done adequately. Overall it would be my feeling that it could be implemented in a period of time ranging from three to six months in total, provided the people who are charged with this responsibility want to implement it in that period of time.

Q All right, sir.

Doctor, drawing your attention to the State Board of Education. You have been an educator in Virginia for some time. You are aware that the general supervision of the entire public school system is vested in the State Board of Education, are you not? A Yes, I am.

Q Would you just, without going into too much detail,

enumerate some of the instances in which the State Superintendent of Public Education, and the State Board of Education, is involved in the operation [B-45] of schools in Richmond, Henrico, Chesterfield, or any other school division in the State? A I believe the State Board of Education is charged with the responsibility of determining and prescribing the standards of quality for the several school divisions within the State, or the quality of the education, defining quality education.

Q Before you get to that, perhaps what you know is what you read in the newspaper of recent origin, but is it not true that at the meeting of the State Board of Education in Williamsburg that they established standards of quality education for all schools within the Commonwealth? A It is my understanding, yes, sir.

Q Is it not also your understanding that at that meeting they put in requirements about the institution of kindergartens, perhaps by all school systems, within the State? A I believe they set a limit of time in which they would prescribe it, yes, sir.

Q Go on. I didn't mean to interrupt you. I wanted to follow that first point. A The general supervision of the public schools in the State is vested with the State Board of [B-46] Education. The State Board and the State Superintendent of Public Instruction administer public free school systems of the Commonwealth. The State Board of Education has primary responsibility and authority for affectuating [*sic*] educational policies as set forth in the educational article of the revised Constitution.

The State Board of Education has the power to bring a writ of mandamus through the Attorney General against

any locality failing to appropriate sufficient funds to meet the prescribed standards for a quality education program.

The State Board of Education certifies lists of those qualified for the office of Division Superintendent to be used in the selection of a Superintendent for a school division within the State.

The State Board of Education may, in certain instances, actually appoint the Division Superintendent for a school division.

The State Board of Education fixes powers and duties of the Division Superintendent.

The State Board of Education has authority to loan funds to local school boards for the construction of buildings.

The State Board and the State Superintendent [B-47] must approve plans and specifications for the construction of new schools.

Q Let me stop you right on that point a minute. How long have you been in Richmond, sir? A Seventeen years.

Q Certainly as long as you have been in Richmond have not the State Board required that it approve all plans and specifications for every school that has been built in Richmond since you have been here? A Well, I believe that is delegated to the State Superintendent as their authority.

Q Or the State Superintendent? A The State Superintendent.

Q All right, sir. A Yes, sir.

Q All right, sir. A The State Board prescribes regulations dealing with the requirements for construction of buildings through an extensive manual of requirements for construction.

The State Board of Education establishes the rules and requirements for certification of teachers within all subdivisions.

Q Unless a teacher is on the list, [B-48] certified by the State Board, no local school board can hire or pay such a teacher? Maybe they can hire but they can't pay her, is that not correct? A No, sir. Not exactly.

Any teacher must have, before she can be employed, a valid certificate issued by the State Board of Education, and if exceptions are made to the general rules, general requirements, for emergency use, that is done through the State Department of Education.

Q In other words, if someone doesn't come to it, a person can only be hired with the approval of the State Board or Superintendent? A With an emergency by the Superintendent. I believe the State Board of Education administers a State testing program for certificate grades within the State.

Supervise and require the administration of those.

[B-49] * * *

Cross Examination

By Mr. Lucas:

Q Dr. Little, this so-called consolidated plan is not a plan for school consolidation, is it? It is actually a plan of school desegregation? A It is a plan of consolidation whose primary—who has one of the primary objects was of desegregating.

Q This is the school desegregation case and that is the issue before the Court, isn't that correct? A That is correct.

Q And if you were simply merging school systems you would not have looked to these criteria in order to draw up a consolidation plan, isn't that correct? A When? Of what period of time are you speaking?

Q If you drew up a consolidation plan today, suppose everybody agreed to consolidate the school systems. Would you draw the plan in this manner, or would it be drawn according to some other criteria? A Mr. Lucas, if I had my way with or without the Court ordering this, I would have drawn this plan as it has been drawn because I refer you to my testimony, my feelings in this matter of last June when Swann had [B-50] not taken place.

Q I believe your testimony at that time, I refer to it, June 25, 1970, you were asked by me—

* * *

By Mr. Lucas:

Q At that time there had been no suggestion of mergers of school systems, had there? A Not to my knowledge, no, sir.

Q Not in terms of this case in any event? A No, sir.

Q At that time, Dr. Little, I believe I asked you what would be your recommendation with respect to a school desegregation plan, the best plan for the school children in the City of Richmond, which I believe was the language of my question. Assuming transportation, which you had not assumed in your plan at that time which was the HEW plan. Do you recall what your reply was? A I recall my reply. I do not recall the context of your question.

[B-51] Q Give me your reply again, because I am interested in the criteria you set forth at that time. A I

believe at that time, Mr. Lucas, that I was contending that with the racial composition of the City of Richmond that there could be no meaningful intergration, and I distinguished between desegregation and integration, in that when queried by you as to how this could come about I indicated that it could only come by taking transportation into consideration, by the involvement of a larger area than the City of Richmond. Your question, I believe to me, was was I referring to Henrico and Chesterfield County, and I said yes and possibly a greater area, greater portion of the metropolitan area.

Q I believe the series of questions arose by reference to an earlier deposition, Dr. Little, when I asked you what criteria the School Board had given to the HEW team to consider. What factors it had asked it to consider. And I believe your testimony at that time reflected that you suggested something in the nature of a 30 to 70 percent ratio, is that your recollection? A I believe I did, yes, sir, as a desirable ratio.

Q But I believe you did not set any arbitrary [B-52] limit. You said somewhere in that neighborhood. A And I did not know where that point was.

Q I take it that is consistent with what the Board has proposed in its consolidated school plan? A I believe so. I believe we were proposing here a general range of 20 to 40. 30 is right in the middle of that.

[B-54] * * *

Q So under this consolidated plan, after studying the transportation in Henrico and Chesterfield, and a plan utilizing the techniques of the Foster Plan for the City of Rich-

mond, I take it you found that there is not a very large increase in the amount of transportation required to desegregate all of the schools, is that correct?

[B-58] * * *

Q What is your criteria for a viable racial mix? A In this plan we were attempting—

Q Well, let's take it outside of this plan. Let's talk about it in general, first of all. What, if you wanted to determine a viable racial mix for a school community, what would you look at? A I would look at the community and what it had.

Q In terms of its pupils? A In terms of its pupils.

Q And the racial composition? [B-59] A And the racial composition, yes.

Q And is that what you have done here in setting up the perimeters and your goals for the consolidated school plan, or the desegregation plan for the City and the community of Richmond? A Yes. But we are shooting—we were shooting at here the same thing I indicated to you in interrogatories very early in this case when I used somewhere around 30 percent, because I do feel that when you get too much below 30 percent your black child is in isolation and he does not benefit from the experience. When you get too far over that you run into resegregation and a lot of the disadvantages of the all-black school.

But yes, in direct answer to your question, yes, for certain we looked at what we had in Richmond and fortunately we had a situation where that viable racial mix was available, but not properly dispersed.

Q Well, looking at the map of the Richmond area it appears to have a black center with a white ring and a black ring around that. Now, you have talked about resegregation, white flight, and things of this sort. Let's assume for a moment that you have essentially the same situation, but that your racial percentage, vis-a-vis, [B-60] the City of Richmond and the County of Henrico and Chesterfield, whatever names you want to assign, was a 50-50 ratio. Do you still say as an educator that that school community should reflect that community's racial composition? A Mr. Lucas, you are asking me a hypothetical question—

Q That's right. A —in reference to a situation. As I indicated, we looked at what we had and we had it. Before I would want to answer that question, I would want to know more about the hypothetical situation to which you refer.

Q Dr. Little, you have been qualified in this Court as an expert witness. Just take the hypothetical I give you.

You say you have to look at the composition of the community, which is what you did here in Richmond. I am not challenging necessarily what you did here in Richmond. I am just trying to ascertain what your criteria are, what they are based on.

My question to you as a hypothetical situation, suppose you had a similar pattern to the one you have here in Richmond where there is an outer [B-61] boundary that is much more heavily racially concentrated in terms of its black population. You have a circle of white or predominantly white. You have a center of predominantly black, or much more racially concentrated. Now, I am asking you the hypothetical. Suppose your center and your first ring of

white came up with a racial percentage of 50 percent white and 50 percent black. Would you still recommend a system integration plan for the school community using that criteria? A Again, Mr. Lucas, on a 50-50 basis, you tie me too close to the tipping point, if you please. If you want to take that to a higher percentage than 50 in the categorical situation, I will answer it as I have answered and contended in this Court before, that there can be no meaningful integration when you reach a certain point. I don't know what that point is. It could be 50 percent, but if you will put your hypothetical question at 60, 65, I would answer it then. No, I would not recommend this.

Q So you would recommend maintaining segregated schools, all-black schools and all-white schools or approximately so, rather than going to a balance of 60 percent, to take your hypothetical, in all the schools in the system reflecting the school community [B-62] pupil ratio? A No, I don't intend to imply that at all. I am saying that if I had a situation of that kind, that I do not feel that educationally you would gain anything by setting a racial balance in it.

However, that is educationally speaking. Now, when you come to the legal aspects of it—

Q Let's leave the legal aspects for the Court. That is for the Court and the lawyers, Dr. Little.

I am asking you educationally would you still maintain segregated schools when confronted with that factual situation? A No. Instead I would recommend that you do your racial balance within the individual schools.

Q Well, Doctor, I am assuming—perhaps I am not making it clear.

Suppose I have got at Kennedy, which is 100 percent black, and I have another school out in the County, and I won't call any name, that is a hundred percent white. It so happens that your community ratio is 60 percent black. Would you leave Kennedy 100 percent black or 90 percent black, and the school in the County as 90 percent or 100 percent white? A No, I did not say that, neither do I imply [B-63] that.

Q I don't know whether you did or not and I want to find out what your opinion is. A I would work within the City of Richmond and would not recommend this merger.

[B-69] * * *

Q Your recommendation for the proposed central Board actually results in the Richmond Board losing control, that is to say there would be a majority of Board members that would come from the county areas under your proposal, is that correct? It would be five-four, right? A It would be five-four. I am not completely willing to agree with your conclusion.

Q Let's say they will have a voting majority? A That they will, the counties will, have a voting majority, yes.

Q I won't ask you to agree with my conclusions.

So in other words, this isn't a question of the Richmond school system swallowing other school systems. Actually the county systems will have the majority vote in terms of issues affecting a consolidated system? A I have answered yes to that.

Q Do you think it is important in a plan that there be some, in view of the history of school desegregation and its sometimes effect on black [B-70] administrators, do you think

as an educational matter there should be some built-in assurances that there will not be a reduction in the number of black administrators, people in administrative positions, principals, assistant principals? Do you think educationally in terms of the success of desegregation, integration, that this is a required protection? A I think both educationally and legally that it is, most assuredly.

Q What is its value, educationally, to you, Doctor? A Well, as long as our students, as long as the boys and girls growing up now have to live in a biracial society, as we have in the City of Richmond and metropolitan area, I think they need exposure to black adults and teachers as well as they do interrelationships with the students. I think conversely the black need the influence of the white. I don't think that proportion is completely a fixed percentage because I think you always need to take into consideration the quality of the individual who is teaching as well as the racial composition or the racial characteristics of the individual.

Q Do I hear you saying, Dr. Little, that [B-71] there are some educational benefits to be derived by white children from integration? A Educationally, yes, I do feel that there are.

Q Do you think it is important that there be substantial numbers of black counselors dealing with and particularly high school students in all of the schools? A I think your black representation should cut across the board in all types of positions.

Q What about central staff? A Central staff, teachers, counselors, principals, administrators, supervisors, clear across the board.

However, I want the quality maintained in the individual regardless of his race.

Q Do you think, Doctor, that there should be some seniority protection, that the protection of the people already in the system should be based in part on some sort of seniority system? A Oh, yes, I think in any incidence that seniority should be a factor; however, I do not feel that seniority should be maintained if gross incompetence exists.

[B-72] Q I would agree with you on that.

Doctor, the history of school desegregation has unfortunately reflected a substantial drop in black teacher representation, aside from black administrators, which is— A I am aware of that.

Q Do you think that a consolidated system under systemwide desegregation plan should have as not only a goal but a requirement, the employment of black teachers, the maintenance of levels of employment, indeed increasing them to somewhere near the levels of the black pupils in the system? A I think that it should. However, I do not have any great fears in that and I can see why the black citizens would from past experience, but I don't believe that—well, I think the protection should be there.

Q Would you set a limit on how many black teachers could be hired or would you— A No, sir.

Q —or without exceeding the black percentages in the metropolitan population would be acceptable? A I think an approximation of your population [B-73] would be acceptable.

Q But you would not restrict it to that approximation if there were more qualified black teachers available? You

would feel they should be employed? A I feel they should be. And to a limit, if there are more qualified whites, I would want some leeway in that, too.

[B-75] * * *

Q Dr. Little, do you see this as an annexation case? Are you interested at all in the political side of government in the community, or is your interest the school children in the community? A I wouldn't want to put it in an either/or situation, Mr. Lucas. I am interested in government, I think, as any citizen should be interested in government. I do not consider myself an expert in the field of political science.

I am interested and primarily interested in the boys and girls of the City of Richmond, in the metropolitan area. I do not see this as another annexation case or any semblance to an annexation case.

I see this as getting together the educational resources of the community and the educational services within the total community. I think a better school system for all three divisions can evolve if we are operating together.

[B-76] Q Let me ask you one final question, Dr. Little. As an educator, and let's put aside the question of white flight and things of this sort, from a student's point of view, from a child's point of view who is in, say, a black school in the City of Richmond near the periphery of the City and across the line there are county schools that are white schools. Educationally, in terms of the child's perception, is there any difference in terms of whether or not there are racially separate schools, dual school system in this community? A I think children in both schools are being shortchanged.

Q They both know that it is a dual system. They know white schools and black schools are adjacent to each other in that community, is that correct? A I think the black child is probably much more conscious of it than the white child is.

[B-77] * * *

Cross Examination

By Mr. Gravatt:

[B-79] * * *

Q Well, 20,000 to 30,000 is certainly adequate to provide an adequate modern educational system, is it not? A Yes, sir.

[B-85] * * *

Q In other words, for each attendance area or each school? A The children that had to go out could come from lottery.

Q Well, now, how would you work that? How would you do it? You put all the names into a hat and pull out the number that you want, or do you have some system that you take every tenth name or what would you do on this? A I believe your computer print-out indicates the number of birthdays that are estimated to be needed to gain the number of children that we need to bus out of an attendance area. You could choose that number of birthdays. You could choose them consecutively or choose them at random. And if you did not get a sufficient number of children to meet the quota needed in that, you could pull additional birthdays. If you got too many, you could cut off birthdays to

gain the number of children that you need to bring [B-86] about a viable racial mix in that individual school.

[B-93] * * *

Q Well, how would you deal with it? This is what I am asking as a practical matter. You have got 125 children in a little attendance area attending elementary school. These children move out of that attendance area. They go over into another attendance area that falls in another elementary school. Your computer says you have got to get these children down here. What would that do to your system? A It wouldn't do anything, sir.

Q Well, how would you get them there? A I wouldn't get them there.

Q What would you do? You couldn't take them in the bus if they weren't there. A Weren't where, sir?

Q At the school that you were bussing them out of, according to your print-outs. A I would expect there would be other children there to fill the quota.

Q The other children have not been selected. [B-94] They are the ones that happen to be the unfortunate ones that were left in their school. They didn't get in the lottery. I am talking about the ones that were selected, that were in the lottery. You told them they were in it and all the parents moved them over to elementary school A, B, and C, and clean away from elementary school D. A Well, I have a feeling that other children would move into those houses from which those children move out of, Mr. Gravatt. Your policy would need to determine whether those kids who come in go under a new lottery to bring the quota up, and whether or not the children who move would fall under

the lottery in that attendance area or whether they would be exempt.

[B-107] * * *

Q I believe we have already agreed that [B-108] Henrico County and Chesterfield County have an ideal number of pupils in order to have a modern and efficient educational system. Am I correct? A I do not agree to ideal. I think they have a sufficient number of pupils to operate an efficient school system. I am not sure what ideal is, sir.

Q All right, sir.

And the City of Richmond falls within the same general area of limitations as to its numbers? A I would say so, yes, sir.

[B-110] * * *

A I think in a biracial society where boys and girls have to grow up and live in a biracial society, that one component of quality education is an integrated educational program for both white and black. I think that it is a significant one. If you are measuring quality by—there are two components to a quality education program. One of them is the development of the attitudes and understanding and appreciations. The other is the academic achievement. I am one who believes that both of those components are hampered in the achievement of both of those components if you do not have an integrated school system and a totally integrated school system.

Q And what you mean by that is a ratio of black to white students approximating 30 percent black and 70 percent white? A That, I think, is a desirable ratio, yes.

[B-111] Q So this is the only educational benefit that would inure to either of these school systems under the proposed consolidation? A What is the only benefit, sir?

Q The attainment of an ideal ratio of black to white in accordance with your formula for that? A No, I can't agree with that.

Q Well, what other? You said that each other— A I don't think you can have a quality educational program either from an academic attainment level or for the development of attitudes without an integrated experience in a biracial society.

Q Well, did I understand you to agree that each of these systems had an adequate educational program in faculty with possibly some deficiencies in physical equipment, and in the programs offered the students? A Not for a quality education program because I don't think Henrico and—I think Henrico and Chesterfield County students there need the influence of the black just as much as the black need the influence of the white. I think that the children [B-112] in Henrico and Chesterfield need the influence of black teachers and black counselors and others just as bad as the black children need the influence of the white.

Q Well, this is the one thing that would be gained by consolidation? A I think this is a significant thing that would be gained by consolidation.

[B-116] * * *

Q Well, we have Amelia sitting here next to Chesterfield which has 64 percent. Do you think that is a good racial balance? [B-117] A I do not, no, sir.

Q What do you do to relieve that? A That is not my problem, Mr. Gravatt. My problem is with the City of Richmond and Henrico County.

Q Well, if it is an educational problem it would fall within your purview of expertise, and if this is something that reaches to an educational significant thing, I am saying don't you think that the same rule ought to be applied to Chesterfield's 90 percent white with respect to Amelia, as you apply them with respect to Richmond? A My knitting at the present time is with Richmond, Henrico, and Chesterfield County. I cannot solve all of the problems of desegregation in the United States.

[B-119] * * *

Q Petersburg has 60 percent and Chesterfield could join Petersburg. 67 percent. Would you consider that there ought to be something done to relieve the problem in the City of Petersburg? A I think that is a problem to be solved, or to be undertaken, by the Petersburg school officials in solving their problem. I am employed by the School Board of the City of Richmond and our immediate problem is Chesterfield, Henrico, and the City of Richmond. However, I might point out to you, Mr. Gravatt, that we have treated subdivision six here separately and independently and recommended it be. Petersburg might well want to look at subdivision six of Chesterfield County for a solution to its problem.

The Court: That is correct. That is correct.

And maybe Hopewell and Colonial Heights is next to Petersburg, and maybe they would get in with somebody to relieve them. I understand they have zero black population.

The Witness: That is my understanding.

[B-120] * * *

Q Yes.

Now, I don't have any idea what the people in Petersburg might have to do with the people in Richmond. The only thing I think you have made this clear, and I just want to get it locked in, the only thing that can benefit, the only reason, really, for the consolidation that you are suggesting, is to bring about the racial balance that you think is appropriate, as much as you can get for each race to associate with [B-121] the other, and not to reach a theoretical tipping point when the process might be reversed and the benefits might be lost. A My only objective in this is to provide an environment for quality education program for the boys and girls of Henrico and Chesterfield County. It is my opinion that a desirable racial composition is a component to a quality education program.

Q And that the ratio ought to be what? A That a desirable ratio is a range between 20 and 40 percent.

Q Of black? A Of black, yes, sir.

[B-159] * * *

Cross Examination

By Mr. Lacy:

[B-160] * * *

Q We have had substantial testimony here about this lottery system.

If you will refer to J. L. Adams School up there, I notice that 177 whites must be bussed out.

Now, the elementary system encompasses grades K through five, is that correct, Dr. Little? A That is correct. Yes, sir.

Q When you choose these 177 students to be bussed out, do you do it by grade or do you just take the first 177 pupils with the correct birth date? A You would choose the number of birthdays that are necessary to give you the 177 pupils. Whatever the percentage is. Whatever 177 is of 518 would give you a percentage figure. You multiply that by the 365 days to give you the number of birthdays that are necessary. You would choose all children from kindergarten through—

Q The fifth grade, sir? A Fifth grade to fulfill that quota. They would fall by grade to whatever they are.

[B-173] * * *

Cross Examination

By Mr. Rogers:

Q Doctor, I will try not to cover the same ground. They may have touched on some parts of it, but I will try to make it brief.

If the population of Richmond was 70 percent white or 30 percent black, and the population of Henrico was 70 percent white and 30 percent black and the population of Chesterfield was also 70 percent white and 30 percent black, and the schools within the area reflected that racial composition, would you recommend the school consolidation? A No, I would not recommend this school consolidation, but I would recommend that Henrico and Chesterfield merge with the counties that are adjacent [B-174] to them that are predominantly black.

Q In other words there is no educational reason, as far as the school system of the City of Richmond is concerned, or any community of interest with the City of Richmond, that would prompt you to make this recommendation that is being made here? A There are certain efficiencies for a large operation that I think would make it desirable, but I don't think that the motives that have caused this suit to be instituted would be present.

[B-189] * * *

Cross Examination

By Mr. Byrne:

Q Dr. Little, I believe you stated that you did not become a proponent of consolidation until your testimony in June of 1970 before this Court. Is that right? A Publicly. Public proponent, yes, sir.

Q All right, sir.

At that time, as a result of that hearing, had the Court told the School Board of the City of Richmond it was not going to accept the Sullins Plan, to come back with another plan? A I beg your pardon?

Q At the conclusion of that hearing did the Court tell the School Board of the City of Richmond that it was not going to accept the Sullins Plan? A Yes, sir.

Q And to come back with another plan acceptable to the Court? [B-190] A Yes, sir.

Q That is when you became a public proponent of consolidation, is that correct? A Yes, sir.

* * *

DISTRICT COURT PROCEEDINGS OF AUGUST 18, 1971

[C-4] PROCEEDINGS

(August 18, 1971) (Wednesday, 9:45)

The Clerk: Civil Action 3353-R. Carolyn Bradley et al. versus The City School Board, City of Richmond, et al.

Continued from yesterday.

The Court: Good morning, gentlemen.

All right, sir. Call your next witness, please.

Mr. Little: Dr. Thomas Pettigrew.

DR. THOMAS PETTIGREW

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

[C-5] The Court: The Doctor is qualified.

By Mr. Little:

Q Dr. Pettigrew, your resume describes you as a social psychologist with expertise in race and education. Would you first briefly describe or define social psychology? A Well, Mr. Little, it is an emerging social science discipline of its own. The briefest way to describe it, I think, is that it is a cross between psychology and sociology. We are concerned in social psychology with both the individual and society. The societal factors and the individual factors because we are, it turns out, we are uniquely equipped, I think, to study social problems of many sorts, drug addiction, etcetera, and race relations, too, which is my specialty.

District Court Proceedings of August 18, 1971

[C-6] * * *

By Mr. Little:

Q Dr. Pettigrew, what particular experience have you had in the area of race and education? A Well, among other things I was a member of the Advisory Board of the Equal Educational Opportunity Survey, commonly known as the Coleman Report. I was chief social science consultant to the United States Commission on Civil Rights in its studies, 1967 and follow-up study to the Coleman Report entitled Racial Isolation in the Public Schools.

I have done research in the area for 15 years and published three books, a hundred articles or so, in the area.

Q Thank you, sir.

You mentioned the Coleman Report. You mentioned the study, Racial Isolation in the Public Schools. Are these recognized authorities in your field? A Yes, sir.

Q Would you give your evaluation of the Coleman Report, a general evaluation? A Well, Mr. Little, it is the second largest study ever undertaken of American public education. [C-7] It involved more than 600,000 American public school children at the first, third, sixth, ninth and twelfth grade. It covered the area throughout the United States, continental United States.

It has problems with it. It is not definitive, but then no research in social science, or for that matter, natural science, is ever definitive. It is the best we have at the time. I think it is, in spite of its problems, I believe it to be a landmark study that constitutes, in effect, the watershed for educational research.

Everything now is dated, in educational research, as to whether it was pre-Coleman Report or post-Coleman Re-

port, because virtually everything after the Coleman Report refers to it and relates to it. It has organized the field, in other words.

Q Is it your opinion that in studies in education and race would of necessity involve at least a reference to the Coleman study and to racial isolation? A Well, I am not sure it always would be necessary, but it would be very difficult, I think, to avoid saying how your work relates positively or negatively to the studies. The Commission study was the smaller study.

[C-8] Q This is on— A On racial isolation in the public schools.

Q All right, sir. A It further analyzed the Coleman data as other methods, asks some additional questions particularly as they relate to racial education, and then did some research of its own, which I helped to direct. It is in no way as extensive a study as the Coleman Report, of course, but in some ways it is as relevant, or more so, to this and similar cases.

Q Well, you mentioned—has all study stopped since the publication of Racial Isolation in Public Schools, or is this like any other science and continuing to go on? A Yes, sir, it has continued.

More than that, I believe it has been stimulated by in particular the Coleman Report so that we have much more. We have, I think, better research now than we had before the Coleman Report. It has been inspired by the Report, and if I can use an analysis, it is like now we have a map and wherever we are studying on the map we have some idea where we are in relation to the rest of the terrain. Prior to the Coleman Report, [C-9] anything that exten-

sive, we didn't know really what part of the elephant we were studying nearly as well as we now know.

Q All right, sir.

Based on research that you have referred to, what does this indicate with respect to the achievement of whites in majority white schools as compared with whites in all-white schools? A When social class is controlled whites in predominantly white schools do as well on achievement tests, quite uniformly across studies with very few exceptions as whites in all-white schools.

Q All right.

Similarly, what is the result of the effect on the achievement of whites in the majority white schools as compared with whites in majority Negro schools? A In general, the achievement scores of whites in predominantly white schools are higher than the achievement of whites in predominantly black schools, but I have to add there are research qualifications. It is extremely difficult to make that comparison, unlike the first one you asked me about, Mr. Little, simply because there are so very, very few upper status white [C-10] children actually going to school in predominantly black situations.

In other words, it is difficult to control for social class because it doesn't vary. We don't have very many examples. We have some, of course, but very little of what happens to upper status white children in predominantly black schools to the extent we can control it and have a study on it. However, it seems reasonably clear that white achievement is lowered in such schools.

Q How about addressing yourself to the achievement of blacks in majority white schools as compared with blacks in

all-black schools? A The achievement scores of black children as a function of percentage white or black, however you look at it, of the school, has a function, a line, that is extremely similar to that of white achievement, and so, a black achievement is significantly higher in predominantly white schools than it is in predominantly black schools. We can make that statement with greater confidence than I could make the statement on whites because there we do have considerable variance of social class of black children in both types of schools.

Q All right, sir.

[C-11] Dr. Pettigrew, in some of your writing you use the term that was new to me and perhaps to others, antimetropolitanism. Would you expand on that a little bit, sir? A Well, I apologize for the bad English, but it is hard to think of a better term. I believe what I meant by it in the context of race and education, which I was writing about, using it simply is that this I believe to be the major reason today. I am not sure it was in 1954, but in 1971, with utter confidence I can say it is the major reason for urban segregation of your schools. That is in '54 I think lawyers and social scientists both tended to think of segregation of schools as an intradistrict concern. That is dual systems, etceteras, within a single district.

It is clear today that the much more important factor, and this has certainly become more true, of course, given the demography of your metropolitan areas, it has become today a far bigger factor, the segregation of cross districts rather than within districts, the segregation, in effect.

So that this has led me, to quite some time ago, I might say, to advocate metropolitan efforts [C-12] to break down the segregation when it became clear, not just for central

cities such as Richmond, or as the counties of Henrico and Chesterfield are getting viable racial mix, but really this metropolitan district in many ways is quite typical of many metropolitan areas throughout the United States.

My early recommendation, by the early '60's, for metropolitan cooperation in these matters related to cities in general, metro areas in general.

Q All right, sir.

Coming back, Doctor, on that subject, how would you define the task of providing quality education or equal educational opportunity, particularly in this community of Richmond, Henrico and Chesterfield? A Equal educational opportunity is a big concept that we are still grappling with all of its meanings. One thing, though, I believe social science has near complete agreement on, if we can't agree on some of the rest of the definition, is that it must entail as one of its most important features effective integration, not just desegregation, of schools for both white and black children. And that a quality of opportunity for children of either race is at least difficult if not impossible without it.

[C-12a] Q Doctor, is this premised on the concept that the blacks need to be with the whites? Is that as far as it goes? A Well, no more so than it is premised on a concept that whites need to be with blacks.

Q All right, sir. A I think that our view of, if I can speak for many of my colleagues and myself in social science, is not that racial integration is something paternalistically given for blacks or for whites but is a necessity to achieve the quality of educational opportunity in a viable American society.

Q Well, Doctor, we see a lot of metropolitan areas apparently like Richmond. Are we—is there any basis for the

statement that black is bad? Is that what your thesis is founded upon? A No, sir. Not at all, any more than we are saying white is bad.

But I must say I cannot put in words an answer to that question nearly as well and eloquently as Commissioner Frankie Freeman of the Commission on Civil Rights has put it in the Racial Isolation Public Schools Report. And I would like to read a paragraph from her statement.

[C-13] Q This is taken directly from the Racial Isolation in the Public Schools, right? A Yes, sir. "It must be clear on the issues. The question is not whether in theory or in the abstract Negro schools can be as good as white schools. In a society free from prejudice in which Negroes were full and equal participants, the answer would clearly be yes. But we are forced rather to ask the harder question, whether in our present society where Negroes are a minority, which has been discriminated against, Negro children can prepare themselves to participate effectively in society if they grow up and go to school in isolation from the majority group. We must also ask whether we can cure the disease of prejudice and prepare all children for life in a multiracial world if white children grow up and go to school in isolation from Negroes."

Q Doctor, do you consider that the concept of quality education or equal educational opportunities has special significance for children attending, as you have earlier referred to, integrated public schools as opposed to desegregation? A I believe it does, sir, particularly in the effects of the racial integration. The effects are [C-14] just to put them briefly, as I have already indicated, I think they benefit, both white and black achievement simultaneously, and what is, I think, really ultimately more important than just

achievement, and I do not think schools should be graded on simple achievement scores and reading scores simply, I believe that a shock effect, positive effect for both white and black children, and therefore for American society in race, that is more positive attitudes, more positive interracial behavior, acceptance of each other, etcetera, etcetera.

Q All right, sir.

You mentioned earlier in one of your answers, you made a distinction between the segregated school and an integrated school. Do you think there is a recognized distinction between desegregated educational facilities and between an integrated educational facilities? A Very much, Mr. Little. The more research we collect, I think the clearer this becomes. There is no reason to suspect necessarily or maximally positive effects for either white or black children in nearly desegregated schools. I believe there is every reason, from our research, to expect extremely positive benefits for both white and black children in integrated schools.

[C-15] To explain that statement, obviously I have to make, I think, a sharp definitional distinction between desegregation and integration.

Desegregation, for me, and I think for most race relations specialists in social science, implies merely a mix.

Now, obviously it is a prerequisite for integration, but that is all. It cannot necessarily say that that will lead to positive benefits in and of itself.

Integration, however, implies the mix plus positive interaction as we would want to say between whites and blacks, or if I may put it less socially psychologically in situations where they become friends across race, where there is cross racial acceptance, where there is reduced racial tension, hopefully none of it. In other words, where the school be-

gins to approach the American ideal as opposed to the American reality in race relations where there is cross racial acceptance and reduces much of its potent and negative qualities.

There we see the full advantages of racial mix come to bloom for both whites and black children.

[C-16] Q Based on your research and the studies in the field, is there some type of point at which an environment for meaningful integration, or the term you used earlier, viable racial mix, becomes a possibility? A Yes, sir. You can't make hard and fast rules right down to a single percentage point or anything like that, but I can say with great confidence, and I might say I have been seeing the same thing, increases since I began as an expert witness in the Barksdale case in Springfield in 1965, that the most appropriate effective percentage, I think, for interracial maximizing the opportunity of getting integration in the way I have just defined it, would be from 20 to 40 percent black.

And I would like to explain that a little, if I may, Mr. Little.

Q Yes, sir. A At the 20 percent level, I think below that, and I don't want to make an argument between 17, 18 and 20, obviously, but I am talking about 20 and ten, you know, I don't to make [*sic*] any case two or three percentage points in either direction, but I am talking about a real range between 20 and 40. I think below 20, [C-17] frankly, is tokenism and it has harmful effects. I think it fails to maximize some of the possibilities of the positive effects of integration. I think you will find that the blacks will not be spread in an effective way throughout the school. They may end up heavily represented on the basketball team but not

on the honor society if they are in very small numbers, etcetera.

Once it reaches 20 percent or more, you will find them, maybe not in always true proportion, but you will find some blacks in virtually every extracurricular activity, etcetera. This then becomes, I think, very important for achieving integration, effects for both the white and the black children.

At the other end, the 40 percent, in the Barksdale case I had said 20 to 45 and I might say I said that before the Coleman Report and that is because the Coleman Report findings did not in fact surprise me. They were very similar to many that had already been established, but in much smaller definitive studies. I moved down from 45 to 40 on the basis of what I learned in working for the Commission of Civil Rights about stability. I really think that the 40 [C-18] percent figure relates in particular to stability.

We know for a fact that not always, that these aren't ironclad rules and you can always find a few exceptions around the country, but they are indeed exceptions. I took a year off four years ago and had a good fortune of having a Guggenheim Fellowship. I roamed around the country, didn't do rigorous research, just asked school people in urban systems, I was interested in them all over the country, to tell me about their experiences with various percentages of blacks in schools. I found that to be true in almost every one, that once it is very much over 40 percent, I don't like to use a tipping point because that phrase implies a specific percentage and that percentage, whatever it is, varies a bit according to social class and ecological matters of the urban area, but it is a general statement that can be confidentially made that as you get above 40 percent you will have great difficulty maintaining stability of the racial percentage. And

you are very likely to go from 45 to 50 very rapidly to 75 and more. So I learned this first with the Commission on Civil Rights which study gave me the first chance to look at education all over the country intensively.

[C-19] We had difficulty finding, as did Coleman, schools between 50 and 75 percent black. They exist but you better grab them quick because next year they won't be there, there is a likelihood, and I notice from the data supplied me by Henrico County that there is an example there of it. I am not surprised.

You find examples in systems all over the country. Central Gardens, I notice, was 63 percent black in '66 and '67 and very rapidly moved in '70-'71, the Henrico School system reports it was 96 percent black.

I am not surprised at all by that fact. That is a national trend in urban systems. So I would argue that 20 percent avoids tokenism and 40 percent maintains stability. The 20 to 40 percent mix maximizes possibilities for integration and the positive benefits for integration that I previously outlined.

Q Does the range have a direct effect on the quality of the education that might be expected in the schools?

Mr. Gray: If Your Honor please, I hate to interrupt but I think he is leading the witness quite a bit.

[C-20] The Court: Oh, well, I can separate it. I can tell Mr. Little's words from Dr. Pettigrew's.

Objection overruled.

Go ahead, sir.

The Witness: I believe that the 20—you may not have meant it this way, Mr. Little, but I interpret your question to be on the subject of the processes by which—this is the

way we would say it and I am sorry—of why is this true. I mean the findings I am giving you so far are merely, in effect, aggregate findings. I mean you sort of know, this seems to be the case in schools throughout the country but you think you rightfully can ask why. I mean what sort of process is going on between 20 and 40 percent that seems to produce these positive benefits. That is the question we have been asking ourselves intensively particularly since the Coleman Report. The Coleman Report can hint at process but can't really tell you directly since it was not a longitudinal study. It was a cross-sectional study like taking a photograph of this courtroom. The second can tell the process of what happens here today. But we have been doing longitudinal studies. They are expensive to do.

So, the extent that we have been now [C-21] doing them we think we have pretty good ideas as to what the processes are. They are complicated and we don't pretend that we understand it completely, but I can outline it quickly for you.

One case we feel that in the 20 to 40 percent situation, what you are maximizing and what the process terms and what seems to make it beneficial for both black and white children has to do with a whole series of things. The way the community views the school. The expectations of the teachers for which we have a great deal of research in because the Rosenthal effect, a colleague of mine at Harvard, show kids do better when teachers expect them to do better, and teachers have higher expectations of both black and white children in schools similar to what we are describing as maximizing integration. The counselors seem to have more realistic aspirations. In general, of course, always there are individual exceptions.

The administration of these schools seems to be easier, or at least more effective. So that the many processes going on seem to lead to the effects that I have been describing.

Q Doctor, are you familiar with the projected racial composition of all of the Richmond schools under [C-22] Plan III which will be implemented in two weeks? A Yes, sir, in a general way.

Q I refer you to Exhibit 70, I think counsel has a copy of that and I think the Court has a copy.

The first paragraph is Richmond students attending schools in the 20-40 percent black under Plan III. Do you have that before you, Doctor? A Yes, sir.

Q Have you made an analysis of the number and percentage of Richmond students who will be attending schools in the range of 20 to 40 percent black under Plan III? A Yes, sir. For both white and black students, as is clearly evident in Exhibit 70. Plan III will not provide this at any of the levels for either race.

Q Would you show what percentages are, say, at the elementary level within the 20 to 40 percent range and the blacks and the whites? A Well, K through five, kindergarten through five in the elementary level for black students is only three percent, 3.04. For white students it is 9.43. Percentage of the white students will be in the [C-23] range of 20 to 40 percent, I assume that includes the 41 percent school or 19 percent school.

The middle level, six to eight, only 9.2 percent of the black students would be in the range of 20 to 40 percent black schools. 26.76 percent of the white students would be in such optimally arranged schools.

At the high school level, nine through twelve, none of the black students and none of the white students would be in the type of school I have been describing as having maximal potential for integration.

Q Well, now in your opinion then as a specialist in race and education, what is the likelihood of their [*sic*] being, under Plan III, meaningful integration, quality education in the public schools of Richmond under Plan III? A Well, Mr. Little, Plan III may well be—I haven't studied it in detail and I was not part of this case when Plan III, of course, was up for discussion—it may well be, as best I know, the best available alternative in a non, or even antimetro context that it was drawn up in. It is certainly not, however, a situation that is likely to be stable, in [C-24] my opinion, based on experience of other districts throughout the urban America. It is certainly not ideal, obviously, given my thoughts that I have already expressed about the maximal benefits available under 20 to 40 percent black. In other words, I think it pales beside the proposed Metropolitan Plan in potential effectiveness.

Q Are you familiar with the racial compositions of public schools of Henrico County during 1970-'71, and with Chesterfield as well? A Yes, sir.

Q As they appear— A As provided on Exhibit 70.

Q Would you review those briefly? A In Henrico County, at the elementary level, I think K through six is incorrect there since they don't have kindergarten, but first through six, the percentage of black students in what I would call optimally racial schools is 14.7 black students in such schools in elementary students in Henrico. 5.4 percent of the whites in such schools at the middle level, seven

through nine. 1.3 percent of the black students in optimal schools. 0.2 percent, less than one percent of the white students in such schools. [C-25] And at the high school level from ten through twelfth grade, none of the black students and the white students in Henrico, at least for the '70-'71 statistics, would have the opportunity of attending these schools I have been describing.

Q All right, sir.

How about Chesterfield? A Chesterfield elementary, K through six, roughly a third. 34.24 percent of black students at the elementary level could avail themselves of this type of school I have been describing.

9.6 percent of the white students.

At the middle level, seven through nine, 47.2 of the black students would be in such schools. 7.6 percent of the white students would be in such schools.

At the high school level, ten through twelfth, none of the white or black students would be in 20 to 40 percent schools.

I might add, Mr. Little, if I may, that I believe in all of these comparisons, except the high school level at which there is no difference, neither counting between white and black, you will notice that it is the whites who are even less likely to be in such [C-26] schools as the blacks, reflecting the fact that there was so few black students in these county systems.

And I feel, as an expert in this area, that this case is as important, equally important, for the white students of Henrico and Chesterfield as it is for the black students of Richmond.

And I with some consternation, keep hearing the phrases about what this is intended to do for Richmond and, for black students, as if that were the only purpose. From my

point of view and my reading of the research, I see as equally important for the white students, public school students of Henrico and Chesterfield.

Q Well, in your opinion, going back to Exhibit 70, would you draw the comparison under footnote two with white percentage of the black and white students in all three political subdivisions would fall within that range that you have described under the proposed desegregation plan for the three political subdivisions? A Yes, sir. Under the proposed consolidated division, 97 percent of the black students would attend schools in the range of 20 to 40 percent with the remaining three percent being in 15 to 20 percent black schools, which doesn't upset me too much.

[C-27] Under the proposed Metropolitan Plan, 92.5 percent of the white students could avail themselves of the opportunity of attending such schools and the remaining 7.5 percent would be in those, you know, subdivision six schools ranging from 15 to 20 percent black.

Q Well, Doctor, then in your opinion, what advantages, if any, would there be in terms of meaningful integration or quality education under the proposed desegregation plan for the three political subdivisions? A I think they would be extensive, Mr. Little. I think they would be extensive in terms of achievement.

I think they would be, particularly extensive in terms of reality, Dr. Little, to use the phrase in his testimony over and over again, which I would subscribe to, in preparation for multi-racial world as well as multi-racial community.

We have to remember, of course, that the best guess we could make is around a half and maybe more of the school children going to public school in Henrico County, Chesterfield, and Richmond, will not, in fact, live out their lives in

this metropolitan area. So I [C-28] think we have to prepare those who will be living out their lives here. We have to also prepare them for living their lives in a world, in fact, in which whites are quite a small minority. But to break that down, that global phrase, preparation for multi-racial world, our research, not just the Coleman Report, the Commission of Civil Rights, but considerable research since would suggest that whites who attend such schools will have more positive racial attitudes, more likely to have black friends, and this will be maintained into adulthood. Their behavior towards blacks will be different. They will be much more positive.

The very principles, working on both sides of the colored line. Social science principles are supposed to work on both sides. They are not supposed to be just one race or the other. We are pleased to see that the very same thing happens for black children in such schools, they are much more positive towards whites and so forth. It doesn't mean they think that all blacks or whites are all perfect. What they come to know is that there are some nice blacks and some not very nice and the blacks learn that there are some nice whites and some not so very nice whites and learn to differentiate like they have [C-29] already learned to differentiate between people of their own race.

This has, I think, enormous consequences for the United States.

I agree with the Kerner Commission Report of 1968 which said that our basic problem was white racism.

Q Is what? A White racism. And if you accept the Kerner Commission conclusions, as I do, and as I believe all specialists in race relations would do, then I don't see, I think really this means that positive attitudes and behavior develop among the children as far as the country is con-

cerned is even more critical than the positive attitudes developed among the black children. This is one known means, among others, but one known means of alleviating the white racism. The Kerner Commission Report, I think, correctly specified that as our basic problem.

Q Doctor, does it make any age—based on the studies and research, does it make any difference at what age level students first experience an integrated educational opportunity? A Yes, sir. The evidence on this is, [C-30] really seems to be very clear. Our evidence, since the Coleman Report and the Commission on Civil Rights Report, not only support the conclusions on those reports, but I think bolstered it further and made us more confident about it, is very clear that integration is most important in the early grades, the elementary grades, the very first grades. It is important all the way through. I wouldn't argue against integrated education for high school students who had not had the opportunity in previous years, but I will say that it is more difficult to achieve integration in a high school after there is both white and black students who have known only segregation prior to high school.

A lot of the unfortunate incidents in interracial schools, not just in Richmond but throughout the country lately, I think, are products of the fact that we are attempting to desegregate children who have known only segregation prior to that.

Now, we haven't had those incidents in elementary schools, and there is a good reason. Simply that their racial attitudes and behavior are not set in the way that older children come. They are [C-31] more open for the situation and in fact do generate easier integration.

We can show that the effects of this, cumulative effects,

in a way we couldn't show from the Coleman Report which wasn't a cumulative study, are very great indeed.

Q Well, Doctor, under the proposed desegregation plan encompassing the three localities, what academic benefits can reasonably be expected to be provided that would not be present without a combining of the three systems? A Academic benefits I would hope for increased black achievement in the 20 to 40 percent schools, particularly for those black children who are now in predominantly black schools under Plan III or the previous plan in Richmond.

I would hope that the achievement levels of the white children would not be affected from what they are now. Some may go up but those white children who are in predominantly black schools.

That last I wouldn't bet a lot of money on because I don't think they have gone down in any appreciable extent.

Q What about non-academic educational [C-32] benefits that could be expected between the two operations? In other words, under the Metro operation as opposed to the absence of Metro? A Well, I think they would be the most extensive of all, Mr. Little, in terms of the attitudes, as I have mentioned, in terms of interracial behavior. I might also add that the distinction between non-academic, if you will, benefits, and academic benefits, is, of course, partly artificial we are drawing here. They are very related. They are related in part for the very reasons I have tried to specify, that is the difference between mere desegregation and true integration is, if you get the positive non-academic benefits, friendship, etcetera, operating, you are much more likely to get then a positive achievement. It is really one ball of wax and we are pulling out parts of it for analysis, but we should never forget that it is one ball of wax.

I would like to give one example of what I mean there. That is, we have found now in research since the Coleman Report that one of the things that happens, particularly for lower status black children, when they attend schools in the 20 to 40 percent black range is that ironically enough [C-33] aspirations say, for occupational aspirations come down.

Now, at first glance that would look like a great disadvantage of interracial schools, but it turns out to be an advantage and ups achievement because in much of our research we have found that black children have poorly educated parents and tend to have unrealistically high occupational aspirations, unrealistic for middle class white children with many opportunities that they don't have. When they get to 20 to 40 percent black school they learn something about what white children aspire to and then they learn to correct their own aspirations. They don't want to be porters or janitors or anything, but lower from wanting to be an MD, though they didn't know how to get to medical school, down to something like a draftsman, some professional white collar position which, in fact, is very likely for them to shoot at. And they have a good opportunity to get there. This has the effect of upping their achievement. We can show that.

I cite this as only one of the interesting processes that we have learned of. 20 to 40 percent schools seem to operate to up achievement.

I cite it too in answer to your question [C-34] to show that how the non-academic benefits have a very direct relationship to the achievement benefits.

Q Thank you, Dr. Pettigrew.

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District Court Proceedings of August 18, 1971

Cross Examination

By Mr. Lucas:

Q Dr. Pettigrew, in all of your writings there is one phrase that seems relatively memorable, and that is the phrase that you lead an article with. "I am an integrationist." Are you still an integrationist? A Yes, sir.

Q What do you mean by that? [C-35] A I mean by integration not just equal treatment, etcetera, of black and white citizens, but I mean positive interaction, relations between black and whites without artificial barriers placed either by government or other sources.

Q Would you be opposed to an artificial barrier set by a Court as to the percentage of black in a school? A Would I be opposed to an artificial barrier of percentage of blacks?

Q Of a 40 percent barrier, for example? A It would depend. I am not sure.

Q Let me be a little more clear. Suppose you are a black child and you are in a school, community, a metro-community, if you will, that has a racial ratio in its entire community of higher than your 40 percent limit. Would you, as a social psychologist, as an expert in race relations and education, in terms of that black child, feel that a barrier beyond which he might not go in terms of his enrollment in a predominantly white school of 40 percent would be consistent with your thesis as an integrationist? A I wouldn't want to make the barrier [C-36] absolute, but could I ask you a little more about your hypothetical situation? You said the metropolitan area, black percentage. I take it that is of school children and is above 40 percent?

Q Let's assume Richmond was above 40 percent. A The whole metropolitan area?

Q That's right. A Okay.

Q Would such a limit be consistent with your position as an integrationist? A No, it wouldn't be consistent.

Q What role does the community attitude play in terms of the education in public schools? How important is it? A Would you repeat the question, Mr. Lucas?

Q How important is community attitude, or if you will, community perceptions in terms of education in the public schools? A I think it is very critical, Mr. Lucas. I think if a school is stigmatized as bad then no matter how educationally sound it may in fact be, this will have negative consequences for the school and for the children [C-37] in it.

Q In your list of situations for maximizing benefits in your 20 to 40 percent ration, [*sic*] you listed community perception, teacher percepts, [*sic*] counselors and administrators. What about, I am sure this was inadvertent, about what the pupil's perception of himself and the school to which he is assigned by school authorities? A Of course, it is very important, you are right. I was assuming that, in effect, function along with the others. I think it is very critical and I think distinctions that social scientists or lawyers may draw are often lost on children, whether the difference between a school on the Richmond side of the line or Henrico side of the line, I don't think that means a lot to a child. I don't think the distinction between de facto or de jure means a lot to a child. I think the notion he gets of how he is being treated, of what his school means relative to other schools, is critical to his own self-image, but why I stress the other matters too is, I think, he picks it up also from teachers.

Q That is one way he learns it? A One way he learns. He learns it from [C-38] the other children and

learns it from just looking around him is one reason why I am a proponent of interracial teaching staffs, but I am particularly in favor of black administrators. I don't think we have, not just in the south, but in the north, too, nearly enough black principals. I think the kind of conception of children you are referring to in your questions is very much determined, and this is true for black and white children, is that they very rarely have seen blacks in authority over whites. They are not likely to see it for quite a while in the American society if they don't see it in their school. I think this makes the role of the black principal equally important, you see, for white children as well as for black children.

I would like to see more employment and assignment of black principals.

Q So the process which has sometimes occurred in desegegation of the black principal becoming the traffic supervisor in the desegregated system, or the assistant elementary principal where he used to be a high school principal, you would oppose this? You think it is bad for the child? A Well, it is all right in those roles [C-39] as long as blacks are filling other roles, the kinds of roles I am talking about.

Q I mean the reduction of the black principal from his position as principal of a high school to assistant principal of the elementary school? A I think children get that message in about 20 seconds.

Q In terms of the kind of educational harm that the Supreme Court spoke to in Brown in terms of the calculable harm to children from this racial separation, this racial separateness which I take it you say they have perceived very readily, is there any difference for a black child in a

racially identifiable school in the City of Richmond between his situation in 1954 and his situation today, when he is surrounded by white schools? A I think there is, sadly enough, very little difference in spite of all the furor and apparent change for the child himself. Did your question speak specifically of the black child?

Q Yes, the educational harms that result from that as is stated in the Supreme Court's Opinion? A I believe that the educational harm is similar, if not identical, to the harm prior to 1954. [C-40] It may even, ironically enough, have an additional negative component.

Q In that the law has spoken and said that it shouldn't be and yet it still is? A That is exactly right, Mr. Lucas.

Q In terms of the educational harm, the effects on the achievement of the child in such a situation, is it still the same? A I can give my opinion on that.

Q That is what I want, Doctor. A It is a little difficult to give a research response because obviously there are other things varying in that situation, but I would say that the effects are somewhat similarly depressing.

Q Are you aware of achievement differentials between the schools in the City of Richmond and the schools in the Counties of Henrico and Chesterfield? A I am aware of the differences, but I have not studied them in detail.

Q Are you surprised at those differences, Dr. Pettigrew? A Not at all.

Q Is that entirely consistent with the [C-41] effects of segregation as you have observed them in the past and in your studies? A Yes, it is consistent. It would not be the only factor making for the difference since there is also a

social class difference in the student bodies of the counties as opposed to the City of Richmond. That is also undoubtedly contributing to the differences, but it is certainly consistent to, with our research on the effects of segregation.

Q Dr. Pettigrew, you spoke about the differences between integration and desegregation. Many of the studies of schools which were desegregated were really studies of schools in transition, were they not, going from a percentage black to a higher percentage black, as you say, quite quickly in some instances? A That is particularly true, Mr. Lucas, for those schools in the 45 to 75 percent range, yes, sir.

Q And most often those schools were studied in situations where there were other schools in the community which were all-white or substantially all-white? A That I can answer with considerable [C-41-a] confidence, that is always true if you take into account the metro area, Mr. Lucas. The situation you painted me earlier of a metropolitan area above 40 percent black of course does not exist in the United States.

Q What is the basis for that statement, Doctor? A The metro area, 40 percent, over 40 percent black? Simply black Americans constitute, according to the 1970 census, between 11 and 12 percent of the United States. They constitute roughly 14 or 15 percent of the metropolitan United States. So as soon as you stop looking at it in central city terms and look at it in metropolitan terms as race relation specialists will always urge you to do, you will find that there are not that many blacks in this country that, in point of fact, they are not that overrepresented in the metropolitan

areas as opposed to central cities. This metropolitan area, Mr. Lucas, is unusual only in that it is metropolitan percentages that are unusually high.

Q What about Washington, D. C.? A The metropolitan area of Washington, D. C. would be roughly in the same category, the [C-41-b] metropolitan area.

Q About 25 percent? A I can't state that exactly.

Q Is this true, I take it you have seen the census figures, is that correct, the U.S. census? A Yes.

Q Is this true for the standard metropolitan areas throughout the country? A Yes, Richmond, I don't believe, is the highest, but is among the highest for metropolitan area percentages and yet it falls easily and comfortably within the 20 to 40 percent. That is why I have trouble understanding your hypothetical question because we don't think in those terms. We don't have to. They don't exist.

Q Now, let's get back to our transitional school and studies of schools in transition. Is it fair to say that you cannot get adequate social science examination of the effects of any factor if the school is in substantial transition and in a system with schools that are closely dissimilar? A Well—

Q Let me rephrase that.

If you want to do a study, do you prefer [C-42] if you are not studying the effects of transition itself, but the effects of a certain racial composition in this particular instance as a social scientist, would it be better to study a stable school in a stable school system? A It would be preferable for some questions. If you are interested in the transitional schools, you better study it longitudinally and get some feelings toward the process over time, but you notice I have

that the transitional area seems to be in this 45 to 75
Once it hits 70 or 75, it is not usually quite as transi-
l so that when I make my statements about what hap-
to white and black children in predominantly black
ols, I have more confidence in those statements than my
er to your specific questions here that might reflect,
use I am, of course, talking mostly about those schools
e 70 percent black which are not in such transitions
ally.

My question, then, Doctor, is this, is this effect, this
ase in achievement on the part of whites, is this a prod-
f that school or is it a product of that school's existence
ransitional school in a system with other schools which
in or [C-43] are perceived white schools, perceived
schools? A My opinion, Mr. Lucas, would be a
function of both of those things.

In terms of this transitional school again, and your
pt of achieving integration after first achieving de-
gation, is the existence of what Dr. Little has charac-
d as white bedrooms completely surrounding a city
as Richmond an impediment to the process of inte-
on regardless of what level the schools in the City of
mond might be?
other words, if they were 40 percent or 60 percent or
rcent, would it be an impediment that there were these
ng perceived white bedrooms surrounding the City?
es, sir. I think there would be. And not just in educa-

This gets me to your tipping point or stability. Is
ity, per se, an educational matter, or is it simply a
of white flight? A Well, it is both of those things.
is not an either-or.

Q Is it a causation level in terms of education? A Let me make sure I understand your question, [C-44] Mr. Lucas. You are saying if a situation is not stable, does that have educational consequences?

Q That is the first question. A That is the first part, of course, and vast consequences.

The advantage, one advantage among many of the metropolitan plans, and not just for metropolitan Richmond, but one true of the Richmond Metropolitan Plan and metropolitan plans throughout the country, is that it would offer stability. It would offer stability in a way that cannot be offered by central cities today to any parents.

Q Are white schools generally, to your knowledge of the data and your own personal experience, perceived as good schools whereas black schools or schools going black are perceived as bad schools or schools going bad? A Yes, sir. This is the general perception with some individual exceptions, and that perception is shared by white and black parent alike.

Q Does the existence of schools in what is basically one community with sharply differing racial percentages cause or have a causal relationship to both what you call a tipping point and the perception [C-45] of the school as a transitional school? A Yes. It speeds up both processes. I can answer that question because we have a few central cities that have no suburbs. Interestingly enough. In the midwest and southwest, in one city it is desert. So there is nowhere for white flight to flee. In those cases, stability is much greater.

So, in fact, it does exist. So it is, thinking of Albuquerque, in particular, it is that that leads me to say yes to your question.

Q You talked about Henrico County and Central Gardens, Dr. Pettigrew, with its increasing percentage of blacks. Just looking at Henrico separately, does the fact that there are other schools grossly dissimilar in its pupil population as of 1966 in Henrico County have an effect which increases the progression of transition of the Central Gardens School? A Well, I have obviously made no study directly.

Q But in terms of the factor, and using that school, its enrollment without anything else about it— A Well, I do know that the three nearby elementary schools, nearby in terms of three to [C-46] two-and-a-half miles, have only 0.2 to 14.2 percentage black in them. I am sure that that is a fairly well-known fact among the children of Central Gardens, and to the extent it is known, I believe it would have negative effect upon them.

I might add, Mr. Lucas, though, you didn't ask, but it follows from your question, I believe that that would have negative effect on the white children attending these two nearby elementary schools, that they realize that they are in conclaves in a way that the blacks realize.

Now, it is superiority-inferiority status difference, to be sure. I believe the negative effects, however, for American race relations are equivalent.

Q How does housing segregation reach to this point, taking the Central Gardens example, in terms of the availability to blacks of housing outside of an area that has more or less been ceded to them? A Well, housing segregation is, of course, the basis of school segregation primarily. I make that statement not meaning just intradistrict segregation. I am talking about crossdistrict segregation, too, of course, for in a metropolitan area with a community of in-

terest like this one and like many [C-47] others in the United States, when you look at housing segregation, you just can't look at one district. You have to look at it as a system, as a total area. And indeed, that has become the chief cause, as I indicated earlier, of school segregation as we know it to the degree we continued to base our school attendance on strictly geographical grounds.

[C-49] * * *

By Mr. Lucas:

Q You are a native of Richmond, is that correct, Mr. Pettigrew? A Yes, sir.

Q Thank you. A I have studied housing segregation in other areas and I have studied their effects on school segregation and vice versa. I believe the major causal direction is that housing segregation leads to school [C-50] segregation, but we have been able to demonstrate that school segregation can, under some circumstances, lead to and in quite a wide range of circumstances incur housing segregation, also.

In many ways, Mr. Lucas, you simple cannot pull out the realms of race relations employment, education, housing. They are all so interwoven that when we talk, as we have in this case, strictly about education, we are necessarily, for analysis purposes, ripping it out of context of the society. These things are all interlocking as Myrdal made clear in 1944 with the concept of the vicious circle of discrimination.

Q Doctor, looking at the Richmond community in terms of the City of Richmond, Henrico, and Chesterfield County, if there exists in this community schools in which there are

very large proportions of black students, or which are substantially disproportionate to the racial composition of the area, are these schools generally viewed as inferior schools, stigmatized as black schools, perceived to be bad schools, I believe you said? A They are very likely—

Mr. Gravatt: If Your Honor please, if [C-51] he is asking Dr. Pettigrew how he views the schools, as inferior or something, I think the witness can respond, but if he is asking what community sentiment may be in any particular place about a school, I thing he ought to qualify him as to whether he has any basis upon which to have an opinion about that.

The Court: I understand the question to be directed to Dr. Pettigrew's opinion.

Mr. Lucas: Yes, sir, as a social psychologist and as an expert.

The Court: Objection overruled.
Go ahead, sir.

The Witness: My opinion is that it will be viewed as a bad school.

By Mr. Lucas:

Q Do these attitudes have direct perceivable effects on achievement levels of black students in these schools? A Yes. That we can demonstrate they do and there are many ways that it occurs. One way would be through teacher expectations, parental expectations. I might say expectations of other students. The processes by which that occurs is very complicated and you are only unwinding it all now, but we know it exists.

[C-52] Q You mentioned optimal desegregation and

gave some statistics for Richmond. Are you for desegregation and integration of schools, Doctor, even though conditions might not be optimal? A Certainly.

Q Are there benefits which outweigh the detriments of segregation regardless of the ratio of the school community? A I believe so. I always want to shoot, if I can, given the to argue for segregation because of that.
demography for the 20-40 percent to optimize the possibility of integration, but wouldn't want to make that an iron law

* * *

Cross Examination

By Mr. Gravatt:

Q Dr. Pettigrew, you stated at the outset of your testimony that the area in which you have been studying as a social psychologist, and particularly since the Coleman Report, is a new area and that you are in the position of, and your field of study and others engaged in it, are in the position of trying to find out where you are on the map and what part of [C-53] the elephant you are studying, is that correct? A No, sir. I am afraid you misinterpreted me. What I said was we were not so clear prior to the Coleman Report, that the Coleman Report gave us the map and now we do know where we are on the elephant.

Q You think you are farther along in this field than Apollo 15? A I can't make comparisons, Mr. Gravatt, I am sorry, between natural science and social science.

Q How many schools have you studied, specific schools or school systems have you studied in connection with the conclusions that you have stated here? A Well, of course, you don't mean that I have personally, myself, as an in-

dividual studied. You are referring, I assume, to the studies that I am making use of.

Q I am referring to what you have done upon which you base your conclusions. Now, if this includes studies by other people— A Yes.

Q —and schools that other people have studied, you are permitted to include them in the answer [C-54] to the question. A I really wouldn't know, Mr. Gravatt. It would be so many thousands of schools, literally thousands and thousands of schools are involved in the Coleman Report and still more in the Commission of Civil Rights Study. These studies, the ones that I am quite familiar with, or that I directed, involved hundreds more. I would have trouble adding it up, but I can say in the thousands.

Q How many schools have you had studied that had a racial proportion between 20 and 40 percent and from these studies you have gathered the conclusions that lead you to believe that this is something that contributes to the aspirations of people and when they pass this percentage that these aspirations are destroyed? A I will attempt to answer your question, Mr. Gravatt, but I want to say first that it is very difficult, because you are having me accumulate up numbers from a whole range of studies, but again, I can say confidently, and I think I am grossly underestimating, but at least hundreds and hundreds of schools of 20 and 40 percent black.

Q By what means, when you go in and study [C-55] a school that is 40 percent black, by what means do you determine what the aspirations of the black people in this school are, and how do you compare that with what their aspirations might have been were they in a school 70 per-

cent? A Well, I assume you are referring to my reference to the occupational aspirations?

Q Well, a whole lot of things you have said that are benefits, whatever they were. A Well, there are so many different ways to do research in schools, Mr. Gravatt, I am sure you don't want a 50-minute professional lecture in methodology, but I can cite you an example. That particular finding I cited on occupational aspirations was gathered, that is a longitudinal study, that was done as a matter of fact in 80-90 percent junior high in a Michigan city before the desegregation occurred, and you simply had measures where you asked children in many different ways what they hoped to become, what would their mother like to see them become, what would their father like to see them become, etcetera, etcetera. In other words, they name occupations, tell you they would like to be a lawyer, a doctor, or whatever. Then you go back a year later after they have been moved to the then 20 [C-56] to 40 percent black schools, and you ask them again with the precise same measure. From that we know what happened to their occupational aspirations. We do it by individuals. We have the person's name on each one. So we can then also relate that to his achievement which, as you know, is measured by the achievement tests they took before and after.

Q This is only one school in Michigan? A No. This was actually several schools in Michigan.

Q Several schools in Michigan. Eight or nine percent black? A 80 to 90 percent.

Q And you gave these students a questionnaire? A It was done by color, yes.

Q And after they got into a 40 percent school, how long were they in the 40 percent school? A They had been there through the first year.

Q One year. Then you gave them another questionnaire. You took the answers and compared them. Now, how many schools have you done that in? A On that one particular finding?

[C-57] Q Yes, sir. A That has only been done, that I know of, in three studies which may be accumulated up, might involve ten or twelve schools.

Q All right.

Now, how many— A But, Mr. Gravatt, let me finish there.

Q I thought you had. I am sorry. A I am sorry, but I want to explain. These repeated studies now, when we find something in just one study, I wouldn't report it in this courtroom. None of us are confident. We wait and repeat it and see if we get the same finding.

What is important, from our point of view, and from a statistic point of view, is not how many schools might be involved at some point, but of course, you want some number, but how many times you get the same finding, particularly with a somewhat different set of facts that you are involved with, and if you keep getting essentially the same effect, then you begin to become very confident that you have discovered here a process that is not indeed limited to just the one school in Michigan, or whatever, that you started out finding the finding in.

[C-58] Q Well, tell me the schools and tell me the process that you went through to reach the schools. A I

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[C-58] Q Well, tell me the schools and tell me the process that you went through to reach the schools. A I

can't name for you the precise schools, because, of course, the studies hold their schools generally in confidence. The Coleman Report required that. They promised confidence of all, confidentiality of all the schools.

Q You can't tell us how many schools your conclusion, how many studies and in how many schools your conclusions are based on? A That wasn't your query, sir. I thought you asked me to name the school. You meant to name the number?

Q Yes. A I have already attempted to in a general way.

Q You said thousands. You haven't told me how many or where they are located or who made the study. A Well, the thousands you started off with at the beginning, Mr. Gravatt, about what my general conclusions were, based on the thousands. That refers to the Coleman Study particularly, and, as I tried to indicate on direct, that is all over the United States, [C-59] continental United States.

Now, if you are switching gears and talking specifically about the one little effect I talked about on occupational aspirations, that used only, as an illustration of a whole lot of things that I could have mentioned that I am basically talking about circle studies and added all of them up there may be dozens of schools.

The interesting thing about it is we keep getting the same finding when we keep doing it. That gives us confidence that if we keep repeating and getting the same finding.

Q Another thing that you mentioned as a benefit, and I don't know just what kind of benefit this is, that in a school of 20 to 40 percent the teachers' expectations have

some effect on something. Will you explain to me what you mean by that? A Yes, sir.

This is generally known now throughout America as the Pygmalion effect after the book of that title. It was written by my colleague, Robert Rosenthal, at Harvard University.

What he shows is that the performance and the growth over time, he did a longitudinal study, [C-60] unlike the Coleman Report. Growth over time of intellectual development and otherwise is very much a function of what the teacher expects of him. In this specific case he worked in schools in San Francisco. The teachers were told—it was not true—they were told the achievement scores of their children. Actually they weren't told achievement. They were told which children had scored high on a Harvard test.

I am afraid I must confess as a Harvard professor, people expect everything out of Harvard, one way or another—

Q I am an exception. A Well, I am happy to learn that, sir.

The fact of the matter is there is no such test like they described, but they described a test which would tell you which children were going to make a big jump in achievement in the next six months. Actually what they did was they gave a standard achievement test and they chose the names randomly over the whole distribution of real achievement.

They handed this to the teacher and said, now, please don't change your behavior at all toward the children, which is, of course, exactly what [C-61] they were expecting, and as the experiment developed, but don't change it. But we thought you would like to know that you are teaching this class and the following three children are going, we think,

on the basis of this Harvard special test, will make a big jump in achievement.

In point of fact, you go back six months later and lo and behold, particularly in the lower grades where the teachers' expectations are less already firmed up as to the children in the first through third grades, lo and behold, the children who had been randomly selected through achievement scores, had had enormous, in some cases, miraculous increases in achievement.

From that we conclude the teacher expectations are extremely important.

Q So that the problem now becomes a problem in teacher expectations rather than a problem in racial proportions? A Oh, that is always a problem, teacher expectations. I am only bringing it in in my direct testimony, under direct, was simply to illustrate it as one more advantage of the 20 to 40 percent. You can maximize the possibility of positive high expectations of the teachers in this situation.

[C-62] I am not saying, of course you can't have excellent teachers with high aspirations in very different ratio schools. All I am saying is a probability statement that you will more likely—you will have more teachers with positive aspirations in the 20 to 40 percent schools.

Q More likely? A Yes, sir.

Q All right.

Now, I gather from what you have said that you are basing your conclusions primarily upon the Coleman Report. A Well, we started with that. I am now basing my conclusions on a whole range of studies, particularly those done since the Coleman Report, but they are consistent, Mr.

Gravatt, I am sorry to tell you, with the Coleman Report results.

* * *

[C-65] By Mr. Gravatt:

Q Will you take this document? A Yes, sir.

Q Will you take a pencil and write as I read to you? A The percentages in the counties?

Q Yes. A I have those, sir, before me.

Q All right.

What I am going to ask you is Henrico County is adjacent to New Kent County and adjacent to Charles City County. Both of these counties have in excess of 40 percent black in the schools. One is 83.8 and the other is 56½. Now, when you have got to choose between what you would do with the white children in Henrico, how do you choose which ones you are going to put over into Richmond to reach your percentage and which ones you put in Charles City and New Kent to reach your percentage? A Well, I want to answer you directly, Mr. Gravatt, but let me preface my answer with some additional facts about the situation in this Exhibit 52 which I think you have to take into account before a reasonable answer can be given.

[C-66] The fact of the matter is we are dealing with very, very different numbers of population. We can't just look at the black percentage of each of these counties or the white percentage. We have to also look at the total percent. So when we talk about counties like New Kent and Charles City, we are talking about sparsely populated counties.

Q Comparatively so. A Quite comparatively, of

course, because they are as opposed to a metropolitan area which is relatively dense.

Henrico and all but the southern part of Chesterfield being urban density typifies them.

Now, this means to me, anyway, as a social psychologist who has worked in demography, though I am not a qualified demographer, that you could make a rather sharp change in these small populated counties with very few people.

I would hope that where a metropolitan system is set up that the authority of the State Board of Education would in fact take your point very seriously and look quite carefully at these counties, one by one, as to the possibility of what could be done about them giving the metropolitan system.

[C-67] I think you have to start somewhere and it seems to me the important problems in American race relations, which involve today 80-some percent of all black Americans and over 75 percent of white Americans live in metropolitan areas. We have to go after, I think, solutions first in the metropolitan area to see what we could do then about the ring in this case around here.

I really think the rural solutions are quite—have to be necessarily, and you would agree, I am sure, coming from black students. They necessarily are different from an urban area.

I would hope, as you are kind of suggesting, that in time a successful metropolitan system would cause the State Board of Education to seriously consider what it could do about what I would agree with, is an unfortunate percentage in the schools of these counties.

Q In other words, you would recommend that all of the entire school system of the State be studied and that it be adjusted so as to bring about a racial ratio within the

range that you have mentioned, or less black? A Well, let me answer your question in two [C-68] parts.

Q If we get you out in southwest Virginia, include all that, we will get down to a real moderate percentage. That is what I would like to know. A Well, let me answer your question in two parts, if I may.

One, I would like to have a metropolitan system developed and not just for Richmond, but I believe, for instance, it fits, as I have indicated in earlier testimony in Court, I think it fits the Norfolk situation ideally and so forth.

It is likely, I think, to be an ideal solution for metropolitan areas everywhere, including Virginia, not just Richmond.

I would hope the State Board would put particular attention on that factor.

Then, yes, I would like to see a study made of racial proportions throughout the State. Of course, I would hope that we wouldn't have to have a case in Federal Court on each one. That is, that the State Board would take it on its own responsibility and attempt to alleviate their situations of too few blacks and too few whites throughout the State.

Q Well, when these predominantly white [C-69] people are exhausted in Chesterfield, what are you going to do when you get through with distributing Chesterfield and Henrico white people around among the— A We are distributing blacks, too, Mr. Gravatt. Remember it is for black and white.

Q All right. All right.

Well, when you get through with them, what are you going to do to get back the proportion in other places? A Let's take one problem at a time, Mr. Gravatt. It seems to me that the metropolitan situation really commands atten-

tion first to simple numbers. That is what involves the most children.

Q It would be nice if we could take them one at a time, but we are dealing with a constitution that deals with all of us and all numbers at one time. A Not in this single case, though, is it, Mr. Gravatt?

Q You mentioned that an unstable situation is very detrimental? A Yes, sir.

Q Do you know how many people live in trailers in Chesterfield County? A No, sir. I haven't studied that.

[C-70] Q Would you expect the situation to be very stable where you have a substantial number of people living in trailers, and I mean white people, who could hook them up to the automobile and disconnect the pipes and things and go on? A I am not sure. I would have to know about what their jobs were and so forth.

I know some situations have trailers in Florida which are very stable. I know some others where they are virtually tourists that are unstable. I would have to know more about it. I am sorry, but I don't.

Q Well, do I understand you to say that your objection to a predominantly black school is that you view it as inferior or that the community may view it as inferior? A I would like to make the distinction between my view and what I view the community viewing. I think the community views, and not just in the south, and not just whites, predominantly black schools to be inferior.

Q We don't view them that way in the south. A I am southern, too, Mr. Gravatt. I differ with you on that, but in my view, well [C-71] particularly all-black or largely

l-black schools, and all-white and largely all-white schools e inferior, I mean, my view extends to the overwhelming hite school, too, and I don't believe that is shared generally the American community yet.

Q This is based, of course, upon the concept of prepar- g people for the multi-racial society in the world, the so- ty that you mentioned? A It is based in large part on at, though not exclusively on it.

Q Do you think the learning processes are inferior in an -white school and inferior in an all-black school? A s, sir, because I don't think you can separate them, as I licated in my earlier testimony, completely and totally m the non-academic aspects.

Q And why would that be true when, if you get past percent you get to things that are bad? A Well, I men- ned certainly one, the stability factor. You just don't get percent. You get past 40 and you are at 75 percent very ickly. So that, I have indicated in my earlier testimony, are not really talking about 45 percent because before 72] very long we are talking about 75 percent schools l the dynamics of those schools strongly suggest that they stigmatized by American society. That affects both ite and black children.

Q So that the problem is not actually in the racial pro- tion of the school but the problem is in the views of erican society of those schools? A No, sir. You can't l those two things out. I think it is, in the views of erican society, and it is in the proportion itself. Those things are part of the same thing which the Kerner mmission described as white racism.

* * *

District Court Proceedings of August 18, 1971

Cross Examination

By Mr. McIlwaine:

Q Dr. Pettigrew, I believe you said you began testifying in these cases in 1965? A Yes, sir.

Q Is that correct?

Did you testify by deposition in the [C-73] Norfolk case, Beckett against the City School Board? A Yes, sir.

Q Do you recall on that occasion that you testified in this fashion, and I am reading from the deposition, "You make a distinction, and if you do—

The Court: Mr. McIlwaine, would you give the page?

Mr. McIlwaine: Page 25, if Your Honor please.

"You make a distinction, and if you—

Mr. Lucas: May we have the date? There are two depositions.

Mr. McIlwaine: November 11, 1969.

Mr. Lucas: Thank you.

By Mr. McIlwaine:

Q I will start again.

"You make a distinction, and if you do, what is it between desegregation and integration?"

Your answer, "Yes. I think it is a very important distinction. I notice some people may make the same distinction and with the terms the other way. That is a problem of race relations, the nomenclature is not all that standard. What I mean, anyway, by it, and what I think is generally accepted [C-74] by specialists in the field, is desegregation is a mere mix of bodies, black and white in the same school,

preferably in some 20 to 40 percent or 45 percent black ratio."

Do you recall that testimony, Doctor? A Yes, sir.

Q And is that the testimony that you have given here today? A Would you read the last part of that again?

Q "Desegregation is a mere mix of bodies, black and white in the same school, preferably in some 20 to 40 percent or 45 percent black ratio." A Yes, sir. What I meant by preferably was, of course, that would up the possibility of getting the integration.

Q Yes.

And that at the same time, do you recall in commenting upon the work of Professor Mosteller at page 34 and 35 of the same deposition, you said on page 35, "And what it shows is, as we have been discussing here, there does seem to be some optimum level for the achievement of both black and white children that drops after 35 or 40 or so." [C-75] A That is true, sir. And that was in some ways a better and more specific answer than the one I gave earlier here on achievement of white children and black children. It is not what I was implying there. What I really meant and didn't say very well earlier here was it is not a linear effect. Something happens in achievement levels of black and white children, and that something is around 50 percent. And Professor Mosteller, among others, has worked on that function, that line that is between achievement and percentage black in re-evaluating the Coleman Report data. A book on that will soon be coming out. I am a co-author.

Q I believe you testified, what was the name of the first case? A Barksdale versus Springfield.

Q That your testimony has been substantially similar in all these cases down to today?

The Court: I didn't hear the answer.

The Witness: Yes.

By Mr. McIlwaine:

Q You start with a proposition that in order to achieve integration, as you define it, you have to first have desegregation, is that correct? A Well, it is obviously a prerequisite. [C-76] I would hope that you could start right off with integration. See, what I am driving at—

Q But starting with, if you can't, you start out with desegregation, as I understand your testimony, Doctor? A Yes, sir.

Q And then in order to achieve integration, you advocate it, and certain optimal desegregation which tends to maximize the possibilities of integration? A Yes, sir.

Q If I understand your testimony correctly? A That is correct, sir.

Q And that optimal desegregation is somewhere between 20 and 40 percent, subject to the limitations that you have previously stated on going below by one or two percent, or over by one or two percentage points.

Now, given a situation in which you have optimal desegregation, would you advocate to retain the optimal desegregation to maximize the integration over a period of time? A Could you tell me a little more about the situation you have in mind, Mr. McIlwaine?

Q Well, in a metropolitan city? [C-77] A You mean if a whole metropolitan area were between, say, 20 and 40 percent?

Q Yes. A And that was true of the central city, true of Chesterfield, true of Henrico, is that it?

Q Or true of any central city. A True of it, true of each political unit of the metropolitan area?

Q Each school. A Each school in each unit of the metropolitan area between 20 and 40 percent, would I also advocate metro, is that right?

Q No, sir. If you had a system which is set up in which each school in a metropolitan area has your optimal desegregation percentage between 20 and 40 percent black and the remainder white, would you advocate maintaining that ratio to maximize integration, as you understand it and as you have defined it throughout the system? A If we could manage it in every school in the metropolitan area, I would certainly advocate it.

Q Maintain that ratio? A Yes, sir, if it is possible.

[C-78] Q And would you take whatever steps would be necessary, convenient with the educational policy, to preserve the 20 to 40 percent optimal ratio? A Well, that is a sweeping statement, Mr. McIlwaine, whatever steps necessary. Whatever—what other kind of factors?

Q You would advocate maintaining the ratio at 20 to 40 percent black throughout such a system? A In general, yes. I wouldn't say at all, I mean you have got to give me some examples of what would be a rival factor, and I think I am sure you could think of some that might overwhelm the 20 to 40 percent effect, but in general, I would certainly strive to keep it, yes.

District Court Proceedings of August 18, 1971

[C-79] * * *

Cross Examination

By Mr. Lacy:

[C-81] * * *

Q I am holding up here, Dr. Pettigrew, Exhibit 67. One is the large volume that is entitled, Supplemental Appendix to the Survey on Quality of Educational Opportunity. The other is 33 pages long and purports to be the Coleman Report. Is this the Coleman Report? A That is the summary that was issued when it was released on July 1st.

Q Isn't that the full Coleman Report that encompasses, oh, approximately 800 pages? A More than that, Mr. Lacy, if you want to add the appendix.

Q The appendix? A Yes.

Q And is the portion dealing with the subject matter of your testimony, the real heart of the subject matter of your testimony, encompassed on page, or starting on page 218 with the pupil achievement and motivation? A That is chapter three, Mr. Lacy?

Q Yes, sir. [C-82] A Yes. Chapter three is the heart of my testimony.

Q I see.

So really the heart of your testimony is not contained, or the subject matter from which you drew your testimony is not contained in this summary volume, is it, sir? A Well, to the extent that that summary was adequate, I suppose it relates to it, but my testimony is, of course, based on the chapter three in detail. I might say, Mr. Lacy, if I may, on the analysis, that I have personally done with the data since, too.

Q Dr. Pettigrew, you made some reference earlier to the Albuquerque, New Mexico situation where you had a city but no suburbs? A Virtually no suburbs.

Q Is that right, virtually none?

If Albuquerque, New Mexico, assuming it had the same racial ratio as the City of Richmond, would you advocate a racial balance across the board in every school, or would you try to bunch up your whites to give an optimum racial balance in certain schools? [C-83] A Well, I will answer your hypothetical question, directly, Mr. Lacy, but I have to preface it by saying that fortunately we don't have to face any such situation in the United States, and since we don't of course I have no experience with them, nor do we have research on them. Having said that, no, I think I would not.

Q Well, that is a very fine answer. You would not what, sir? A I would not go for the 20-40. I would have to—I wouldn't necessarily balance them exactly over the schools.

My own feeling is that school is an integumented institution of its own and shouldn't have to directly or exactly be a replica of the community.

Of course, I much prefer 20-40. I can get it through metropolitan areas in the United States, but if you force me to your hypothetical situation, I think I am not sure what I would do, but I don't think I would. I don't think I would. See, what your situation would force in return is to have all-black schools to be able to produce some that are 20 to 40 black and though I feel very strongly [C-84] about my principles of 20 to 40 percent black when they are achievable, I don't think I would want to take it out on a large percentage of black children to achieve it. So that would be

—I think you named perhaps an overriding factor to the 20 to 40. Fortunately we don't have it in the United States.

Q Well, take another hypothetical situation. If you had an isolated city such as Albuquerque that couldn't draw upon a surrounding area for white children, and the city had a 90-10 ratio, 90 black to ten white, would you in several schools—by the way, I mean very large city—would you sprinkle the whites throughout all the schools? A By that I take it you mean put ten percent in every single school?

Q Yes. A Ten percent white in every school?

Q Yes, sir. A No, sir. I wouldn't be rigid about that.

[C-87] * * *

Q If all the blacks in Henrico, Chesterfield, and Richmond were middle class and all the whites in Richmond, Henrico and Chesterfield, were lower class, would you still be for the Metropolitan Plan? A Indeed I would, Mr. Lacy.

Q Even though it meant that in each school you would have 30 percent middle class to 70 percent lower class? A Yes. That doesn't bother me, frankly. I don't see what you are getting at.

Q It doesn't bother you that the lower class has a percentage of 70 and the midle class has a percentage of 30 in the schools? That doesn't bother you? A No.

[C-88] Well, let me make something very clear. We have two factors that your questions all apply to. That is one factor is race. One is social class.

In real life, as opposed to your hypothetical situation, these two factors are, of course, correlated. There are more

poor black than there are poor white. They are not perfectly correlated, as your question implies. That is a rapidly expanding black middle class in Richmond and throughout the United States. We have, of course, poor whites.

There is a correlation, of course, produced after 350 years of discrimination, racial discrimination.

Now, as the Coleman Report clearly indicates, you have to consider both of these factors, but what we have not been able, and I must confess to having spent $25,000 of Carnegie Foundation money to answer what you are directly driving at and couldn't get an answer, that is I cannot tell you a percentage where I can for race, where 20 to 40 percent for race works very well. I looked for it. No one could have looked for it harder. And all my associates have the data and do not give us a clear range as they do in race.

[C-89] I think that is because class is not so salient in American life like race is.

What we do know about class, though, I think I can summarize in two principles. These two principles govern, of course, all my answers to your hypotheticals. One principle is I would like under all conditions to avoid an all-lower class school regardless of how that is made up, black and whites. I want to avoid that.

On the other hand, I want to avoid as much as I can, given the real world where correlation exists, I want to avoid a correlation, a hypothetical correlation between race and class.

In other words, I don't want to have a school, if I can help it, where all the whites are middle class and all of the blacks are working class. I don't want it the other way as perhaps your hypothetical is suggesting, where all the blacks are middle class and all the whites are lower class. The reason for that is very simple, Mr. Lacy.

What happens then is the natural class conflicts you get in school that are immediately given in American culture and interpreted as race. We have already seen that in Richmond over the past year. Any [C-90] conflict which could very well have been class conflicts, lunch money incidents, etcetera; there were lunch money incidents in Albert Hill Junior High School when I attended it in the Richmond public schools, but it was a segregated system and the shakedowns were by white lower class. I was shaken down. It didn't appear in the Richmond newspapers. Why? Because it wasn't news in American societal terms. It was just plain old white versus white.

When it became black versus white it was news. I am not saying that it was completely, you know, no race, in effect, involved in there, but I am saying that there was a big class effect and we don't want to have those correlated.

So they are the two principles we are sure of about class.

But you are trying to, you know, talk about percentage terms in class and I can tell you right now, I can't talk about those because the findings don't give them to us.

[C-93] * * *

Q What is the most important variable in [C-94] achievement? A Now, you want to limit it explicitly to just achievement?

Q Yes, sir. A In achievement, the most important variable, according to the Coleman Report and much of the research, is not a school variable at all, but the social class of the child, the family social class.

If you come to the school itself, you can argue the school can't affect that directly. It can, but it takes some time, adult education or something. If you come to the school itself, the

most important single correlate is the social class climate of the school followed by teachers, followed by other things. Now, I want to point out that that is not a statement directly in response to your question and I am afraid because race and class, being so compounded, that to provide middle class milieu for black children, particularly, your class of black children in any degree requires integration. So to pull those two things out is extremely difficult.

Q Can I stop you for just one second, Dr. Pettigrew? Are you finished? A Yes, sir.

[C-95] Q Do you recall an address you made on, I believe July 10, 1968, to a training institute on the Problems of Desegregation at the Teachers College at the Columbia School of Segregation? And I believe reprinted in the Urban Review? If I can find the publication date, volume three, number three, January, 1969. A I vaguely remember it, Mr. Lacy.

Q I thought you would.

In that report, excuse me, in that address, I think it is found on page five of the Urban Review, I have got a reprint here, the HEW reprint, but of the Urban Review, you made the statement, "Race, as it turns out, is not the primary variable. Social class is. The Coleman Report and other researches make this point clear."

Then you went on to say about Coleman, "He did find that the social class of students attending a given school was the chief school," you underlined "school." You emphasized "school," "was the chief school variable of a child achievement score. The parameter can be measured crudely by tabulating the educational level of all the parents of all the children in a given school."

[C-96] Do you recall that now? A Yes, sir. Another way of stating just what I said.

Q The chief school variable is social class? A When you are looking at achievement only, point one and point two, which I just mentioned. The difficulty of pulling desegregation out of that, that is if you are going to provide the class milieu for black children, you must have the integration that was also part of that speech, if you read on a little bit.

Q I just contained it in achievement. A I was hoping you read a lot of stuff and apparently you only read a paragraph here or there.

Q I must admit I read the whole article A Well, great.

Q But taking your statement there, and taking your response to my question that you have two variables, and I can appreciate that, if in this case you were mixing lower class blacks and lower class whites, would you be very happy? A I would look around for some middle class [C-97] blacks and middle class whites.

Q You would look around for them? A And as soon as you think Metro, Mr. Lacy, you can find them. That is the social class argument is an additional argument for Metro. It is not one I dwelled on in direct. I believe the principal argument should be made in race, but to the extent that the social class is, and it certainly is in achievement terms, a powerful variable, I think in the other non-academic things the race is more important, but in the achievement terms the social class is an important variable. It is simply another argument for Metro, which causes me to be an advocate of it.

Q But if these children you were pulling in in the outlying areas were not middle class children, would you have any reservations then? A No. I would want to do it for race reasons, too. You have two variables. You are always juggling there, Mr. Lacy. The fact of the matter is in every metropolitan area of which I am familiar the whites live in the suburban areas, are of a medium higher status than the whites who live in the central city. Mr. Todd's testimony to that effect on Monday could have been testimony for practically every [C-98] metropolitan area in the United States.

[C-106] * * *

By Mr. Lacy:

Q Are you familiar at all with the plan, you sort of hedged back there and I thought maybe you had not seen the plan? Are you familiar with it? A No, I have seen the plan, you know, but I didn't generate it so I can't talk about it in the detail that Dr. Little did, or as eloquently, but I am certainly familiar with the plan.

Q Then you are hoping that the statistical information that you previously cited just a moment ago would hold in order that you may get your social class and along the lines that you think are optimum? A Not hope, Mr. Lacy. Probability theory is a wonderful thing. It will come through for you.

Q Even when people move out? A People move out and adjustments have to be made, as Dr. Little indicated. That is true of any school system at any time, of course.

Q So, in other words, you probably have to have, as the inner city moves out, you probably would have to have a lottery each year or something like that. You would have

to rework your attendance areas and things of this sort? [C-107] A Remember there are many ways of doing it in which lottery is only one. I, myself, would think that if I had to guess, that, it is a guess obviously, hadn't happened. If this plan were put into effect you would get stability, quite remarkable stability, within a couple of years. Maybe quicker than that.

I would like, if I may, Mr. Lacy, to expand on why I think that, because that isn't just a sheer guess. It is in social psychology called a fait accompli effect, and an accomplished fact. Human beings are remarkable in their ability to adapt to even things they did not like very much at all before it went into effect. And I must say, I am impressed at this, as a native southerner myself, that white southerners have shown, in our survey data, ability to adjust to fait accompli perhaps better than any other Americans ever studied in our surveys. The most dramatic Gallup poll changes in the history of the Gallup poll in race questions occurred following 1954 up to today in the acceptance by southern, white southern parents now, of racial desegregation.

We have studied how that came about and the timing is such that it occurs not before the [C-108] event but after. I wouldn't expect Chesterfield and Henrico to be enthusiastic about this plan now.

My point is that I have every reason to suspect the citizens of Chesterfield and Henrico are just as adjustable as other white southern parents have proven throughout the south and throughout the past 17 years. They would adjust to it. In fact, I think they will find when they give it time that it is a better education than they have now and that that would aid stability. But the fait accompli effect doesn't

appen overnight. I am quite willing to say that, but it does ake place quite quickly.

* * *

Cross Examination

y Mr. Gray:

C-113] * * *

Q Now, Dr. Pettigrew, so that I can begin to under- and your testimony and the terms as they apply to this ase, are the schools in Richmond, Henrico, and Chester- eld desegregated? A Well, you mean in a social psy- hological sense?

Q I mean in the sense that you use the term, desegre- ated? A In the terms I use desegregated, meaning mere ix, the Richmond schools are. Some of the Henrico and hesterfield schools are, but not all. As I view it from the ata from 1970-'71 in Henrico County, there are three ele- entary schools, Sandston, Lakeside, Holloday, and in hesterfield there are two, Falling Creek and Hening Ele- entary, the most important level, all five of which have o black students whatsoever. And there is a black, the Iatoaca Lab School where only one white attends. So that y definition of even mere mix, much, but not all of the unties would, in my terms, be desegregated.

Q All right, Doctor.

If you will exclude from your discussion the Matoaca aboratory School about which there will be [C-114] some rther discussion later, if you will exclude that, is there y black child in Richmond, Chesterfield, or Henrico, who not in a desegregated school? A Any black child? In e sense of pure mix, simple mix?

Q That is all I am talking about, Doctor, the terms that you used, desegregated? A Then the black children are in—

Q All are in desegregated schools? A Yes.

Q Now, Doctor, you testified in the Norfolk case, it has already been established. Were you testifying in support of the plan advocated by the Norfolk School Board, or in opposition to the plan offered by the Norfolk School Board? A Neither, Mr. Gray.

Q Beg your pardon? A Neither, Mr. Gray.

Q Were you called as a witness for the city or for the opponent to the plan proposed? A I was called as a witness by the city in reference to principles that they put forward.

Q I see. A I wasn't in fact testifying as to all [C-115] of their principles. The first range of their principles, however, I dealt with the Coleman Report, the Commission of Civil Rights Report, which I was competent to give testimony on.

Q Did the plan in the Norfolk case provide for leaving all-black schools in the system? A Yes, sir, it did.

Q And what was the principle that the Norfolk School Board was advocating for which you were called to testify and on which you testified as an advocate in support of? A The principle. I was not advocating the all-black schools.

Q You were in support of that principle? A It involved social class, climate, and involved shooting for the, as I recall it, 25 to 35 percent range.

Q 35 percent range of what? A Of black students in schools.

Q Were all of these schools in the Norfolk plan going to have a 25 to 30 percent black composition? A As part of the plan they were organizing those that were going to be desegregated and would aim for that with middle class participation in addition.

[C-116] Q Wasn't the principal thrust of the Norfolk plan the preservation of the middle class milieu, as you refer to? A Milieu, that was one certainly. They had a whole list.

Q Was that the overriding principle, Doctor? A No, sir. I am not sure I would say the overriding. It was certainly one of the important principles.

Q That is the one you testified in support of? A I testified to that, yes, sir.

[C-117] * * *

Q You tell me that there is a distinction between the social class as defined in your Norfolk testimony, I mean as you draw a distinction between classes on socio-economic basis. Are all these subdivisions equal in this aspect? A No, sir.

Q So that some of them would have a higher percentage of middle class than do others? A Yes, sir, but if you recall my testimony just a few moments ago to Mr. Lacy, I said that unfortunately [C-118] try as we might, we can't name an optimal percentage range for a middle class like we can for a race and I did not do so in the Norfolk case. Unfortunately my testimony there was somewhat garbled

later in accounts of what I said. Since I have studied, you know, I didn't say that I advocated two-thirds middle class, one-third lower class. I did not. I could not. The research doesn't allow me to say a thing like that.

Q Well, now, again, so that I understand the framework, I want to give you a hypothetical. I want you to imagine a situation in which you have three groups of children living in a strip and at the extreme left-hand edge of your strip they are all lower class black citizens. And in that area where they live there is a school which is not full and has the capability of holding an additional 500 children.

In the middle zone, it is populated by middle class black children and 500 of them. There is no school.

In the right-hand zone there is a school similar in size and additional space to the one in the left-hand zone and this area is peopled by middle class white students. A Middle class or lower class?

[C-119] Q Middle class. A On the far right?

Q Far right. Yes, sir.

There is no possibility of transporting the children from the extreme left to the extreme right. If you are confronted with the dilemma of choosing to which school you will send all of the children in the middle zone? A Now, Mr. Gray, could I just go over your hypothetical situation?

You start at the left with lower black and you have got 500 spaces in a school. Okay?

Q You have space for 500 additional students. A Additional students in that school.

Then the next slot, moving to the right, is the middle class black and there are 500 kids needing a school and they have none, right?

Q Right. A Then the next slot is what?

Q Is middle class white. A You don't have lower class white in the example?

Q No. Don't have lower class white in the [C-120] example, just these three to deal with. A Yes.

Q And you have space for 500 children in the zone with the middle class white. Where do you send the middle class black? A And you can equally well, as far as capacity, hold the 500 in either one?

Q Yes, sir. And the facilities are all equal. A Well, I will answer your question directly, Mr. Gray, but I first have to preface it by saying that, of course, this is a hypothetical in the extreme and we wouldn't have to face such a situation, particularly under a metro program, but we said that you want to know where to send the middle class black. I would certainly want to send them, it is tough, you are giving me Hobson's choice here, but I think—

Q Maybe I can make it easier for you. A I would send them to the middle class white.

Q You would send them to the middle class white. Would you have given the same answer in Norfolk? A I wasn't asked it and never thought about [C-121] it before, but I think I might have, yes.

Q All right.

Now, we are down to the Coleman Report.

On the basis of the Coleman Report, would you send them to the left or to the right? Would you send them to the lower class black or to the middle class white? A Now, you see, what you are doing there is—it depends upon what part of the report you are talking about.

Q I am talking about the part that you have been talking about. A I have been talking about two parts. I am always talking, as I indicated to Mr. Lacy, about chapter three, but there are two things in chapter three. What most of the discussion has been about, of course, is the achievement findings in chapter three, but if you look, I believe it roughly around 331 to 333, there are tables on the academic, the racial attitudes that are affected, and that is the other part. You are always going to have to balance this because, as you know very well, Mr. Gray, and as I testified in the Norfolk case, I don't want to just judge schools by achievement. I think that is wrong and limited. [C-122] Now, if you talk about the first part of chapter three in the Coleman Report, the Coleman Report would hedge on this, but would probably say that the middle class black would have to go or should go to the schools with the lower class black for the class effect on achievement, but let me finish these, Mr. Gray, if you take the latter section of the chapter three in the Coleman Report, then you are talking about latitudes. Then I think that part of the chapter would argue the other. That is Hobson's choice that you have painted me.

The Coleman Report wouldn't clearly tell you to go one way or the other. You would have to choose between what —what you really force me to do is choose between achievement, racial attitudes, and behavior. You know I am a race relations specialist so I am likely to go for the attitudes and behavior.

Q What did the Coleman Report find to be the most important school variable when you studied it? A As I indicated in my earlier testimony for achievement. Is your question, is it not, Mr. Gray, for achievement?

Q Well, Doctor, you see, that is where I have trouble

because I am not an expert in all of [C-123] this and you just have to— A You are doing pretty well, Mr. Gray.

Q Thank you, sir.

Did you testify, let me read you from an appendix page 116, and again reading from the appendix in the Brewer case, which you referred to earlier, page 116 of the appendix.

"If you follow the Coleman data and other similar data that tend to show the same thing, not just for achievement but for other variables as well, it appears that social class of the child is the most critical variable if we just want to predict it."

Now, how does that— A Not for all other variables. And I have just given you an example of one, that is not, that is preferenced for interracial classrooms, which is mostly what that data is on, the pages I cited in the Coleman Report.

Q I see. So it is not all variables. It is just some. Well, which ones? A Well, variables related to achievement in particular, test variables.

Q But the ones not related to achievement. [C-124] Now, they are the ones that you said aren't, we have agreed, I think, that for achievement you would move the children, the middle class black children with the lower class black children. Now, you said for the other ones, the other variables, you would move them the other way. What are they? A I would have to see the context of that remark, Mr. Gray.

Q Well, it is your statement, sir. A I know it's my statement, but my statement out of context. I don't know the discussion prior to that.

The Court: Do you have the record as distinguished from the appendix, Mr. Gray? That might be more helpful.

Mr. Gray: Sir?

The Court: Is that it?

Mr. Gray: This is his testimony, yes, sir.
Well, let me read you the question.

The Court: Well, let me make this suggestion, unless you think otherwise. I am going to recess for lunch and you might point out to Dr. Pettigrew what it is.

[C-125] Mr. Gray: Maybe I can put it in another context, Your Honor.

The Court: Do it your way.

By Mr. Gray:

Q Just forget the statement.

You have told us here today that there are variables other than achievement which would cause you to move the blacks with the whites.

Now, what are they? A In your example, the middle class black?

Q Yes. A They are particularly racial variables. Racial attitudes and behavior variables. Specifically, I am citing those three pages or two pages of tables in the Coleman Report that have to do with the white students' preferences for all-white or mixed classrooms in schools.

Q Well, now, Doctor, as I understand the Coleman Report, and as I understand your testimony, there is a tremendous amount to be gained, and particularly by the lower socioeconomic group among the blacks. A Well, the achievement thing, Mr. Gray, is important for the lower

socioeconomic group or groups. The social class effect that you are describing [C-126] there is true, not just for black but for all American children studied in the Coleman Report, white, black, no matter. The region, urban, rural, doesn't matter.

Q But in the Hobson's choice I gave you, you abandoned the lower class blacks and deprived them of the benefits of middle class contact and moved them to the other, moved the middle class the other way. A Well, I will tell you, I will give you a reason. One, the moving of the middle class blacks with the middle class whites will benefit them both in demonstrable ways. Middle class black with lower class black, I don't think the middle class milieu is maintained. I don't think it will hurt the middle class black achievement-wise, but they won't get the racial benefits they would have gotten out of the other. The lower class blacks would benefit.

So, in your situation, Hobson's choice, which no educator in America would have to make, fortunately, in one situation both kids, both sets of kids would benefit and in the other the benefits would be largely just the one group or one-half of it, as your example has it. So that would be another argument for my choice.

But, as you understand, I am not happy [C-127] about having to make the choice.

Q Well, I am certain that you are not, sir.

Now, I would have gotten the impression, Doctor, today, that your testimony with respect to the racial solutions that should be advocated here stem largely from the Coleman Report. That is the substance that I get here this morning, that it is the Coleman Report that is really the foundation of your conclusion. Is that correct? A Certainly one

big component of it, Mr. Gray, but by no means the exclusive.

Q All right. But I believe you said that all the things since then you have to go back to Coleman, that is the, I suppose we would say in the law, that is the leading case? A My analogy was it was a map. Well, maybe the leading case plays the same kind of role.

[C-128] * * *

Q Doctor, I want to take you back, if I can, for just a minute, to this Brewer testimony, page 6116, and ask you if you recall making this statement. I have read part of it to you before and I want to be certain I have got it all.

Mr. Little: I wonder if you could give us a reference. We don't have the appendix. If you would give us the page.

Mr. Gray: Page 148 and 148-A or 147. I can't tell exactly.

The Court: Thank you, sir.

By Mr. Gray:

Q This is the question and answer.

"Question: I believe you said that the [C-129] most important thing was the social class climate of the school, not the social class of the child. Is that right?" That is the end of the question.

Your answer, "Well, it depends upon what you are focusing on. If you follow the Coleman data and similar data that tend to show the same thing, not just for achievement but for other variables as well, it appears that social class of the child is the most critical variable, but if you just want to predict it, but if you just look at school variables, that which

the school controls, then social class of the school, social class climate, in other words, appears to be the most important school variable. It is not as important in, say, predicting achievement, as social class of the individual children, but I don't think that first factor is of great significance for policy, but you can't control that, at least for this generation."

That is the end of your answer.

Do you recall that? A Yes, sir.

Q Making that statement and that answer, you are still of the opinion today that is true? A Yes, sir. It is consistent, I believe, with what I have been saying today.

[C-130] * * *

By Mr. Gray:

Q Doctor, what is equal educational opportunity as you have used the term? A Equal educational opportunity as I would define it would be the opportunity of every American child, obviously, regardless of race or class or religion, to receive not only an excellent education but an education which in many ways would give him the opportunity to participate fully in American society. That definition, I would wish to add, would have to include in interracial American integration. In race terms it would have to include social class mix to be fully effective.

The third implication of it that I would like to emphasize is that it means that schools really are called upon to do more in effect for poor children than they are for upper status children who bring to the schools so much more to begin with.

So that my, to summarize, my definition and concept and idea of equal educational opportunity [C-131] involves

really a value added aspect, if I might draw an analogy from economics. That is, it is what the school can provide for a child that the child is not bringing.

I would like to also point out that this is very difficult in the way schools are commonly judged, often, I am afraid, by educators themselves. That is, they look at the achievement scores of the children in a school. If it is high, they say, gee, that is a good school. Often that school may in fact be giving very little to the students. They would have achieved high if they had never seen a school, coming from the families that they are coming from.

It is the value added that the schools can give to allow full and free participation in American society.

Q Well, now, your answer gives rise to two questions. You indicated that the schools have an obligation to do more for the poor child than it does for the child who comes so much better equipped and with so much more to start with.

How does that relate to your answer to the question I gave you which you call Hobson's choice? You left the poor child with no middle class mix and [C-132-3] with no racial integration, either. A That is true. Of course, under neither of the choices would you have gotten the racial integration and if I had chosen the other, you would make quite a case for the things that would also be missing. There it is, Hobson's choice.

And I don't want to leave these lower class black children in a school by themselves, as you well know.

Q All right, sir.

Now, you say that the educators tend to look at the achievement test scores, I suppose is what you are talking about, in order to ascertain the character of the schools.

Didn't I hear you do that with respect to the schools in Chesterfield, Richmond, and in Henrico this morning? A I was asked the question. My memory of it, about the scores, I was asked the question. I believe Mr. Lucas on cross asked me about the scores being different in three systems. I commented that I wasn't surprised that the achievement scores were lower, on the average, in the Richmond schools.

I gave my reasons. Those reasons are, [C-134] in effect, that I wouldn't therefore judge the Richmond schools lower. It could well be that the value added aspect of the Richmond schools was considerably above that of the counties. I don't know.

Q All right.

Now, to return to the original line of questioning about equal educational opportunity. Would you say that one way to gauge the opportunity that has been afforded is to measure the achievement made? A One, among many.

Q Well, how else would you gauge the opportunity that one had than by looking at what he achieved? A You mean on a test score?

Q No, sir. A Achieved?

Q By achievement, whatever you mean by achievement. A Well, of course, test scores are what people generally mean, but if you would broaden the definition, I would be happy with it. I am particularly interested to follow the products of the given schools as to what happens to them in later life.

That is really, in a sense, the ultimate [C-135] test of what a school has provided for them.

Q Well, because of the situation which has existed, we haven't had too much opportunity to test what happened

in later life? A Yes, sir, we have had a little. You are right, we would like more opportunity to study it, but that is true of everything. There is a study, I would remind you, in the Commission on Civil Rights Racial Isolation in Public Schools, which I helped to direct, survey study of whites and blacks in the north and west. We couldn't do it in the south for obvious reasons. They had had a desegregated education, at least as children, as opposed to the white and black adults who as children had not had it and we did, in fact, find that the effects, the positive effects that I was reporting on this morning do seem to carry over for both white and black adults into adult life.

Q And were these results obtained in areas where there was the thought that you expressed this morning that integrated schools are not as good as all-white schools? A No, that wasn't the thought I expressed this morning to my memory, Mr. Gray.

I expressed the point that I thought there [C-136] was a general sentiment that all-black schools or overwhelmingly black schools were thought to be not as good as predominantly white or white schools.

Q Well, in the areas in which the study you have just referred to were conducted, was there any community attitude toward the school because of race at all? A Oh, yes, I am sure in many of them there are. Of course, this was a national study, omitting only the south, in the urban north and west.

Q Have we arrived at the fact, or not, that using the term of achievement as you use it, that looking at achievement is the best way, maybe, to see what opportunities were offered? A The ultimate achievement of adults, of course,

is controlling for the social class origins. That would be one very good one.

Q Was the statement which I read to you earlier directed to the fact that the best way to have achievement is to have the social class mix in the school? A Yes, but now we have to be careful, Mr. Gray, that we have two definitions of achievement here.

[C-137] Q Well, that is where I have trouble, Doctor. I try to get you to define it and when I try to take you back to another statement you change the definition. Which do we want? A Wait a minute. I haven't changed definitions on you. The remark you are quoting from, my Norfolk testimony, in terms of the tested performance, is what the research is on the Coleman Report, achievement. We are talking about following in adults that wouldn't necessarily just be tested results.

Q Doctor, are you telling me that your testimony in the Norfolk case on the subjects I have just referred to, you were referring to test scores? A You jump around in my testimony there.

Q No, sir. I am not jumping around. I have been on appendix page 116 the whole time and haven't move an inch. A I don't have it memorized by page, Mr. Gray, but yes, when I was discussing data from the Coleman Report, I necessarily had to talk about achievement scores.

Q So that the Coleman Report isn't talking about anything but achievement scores and test scores? A It talks about more than that, but not [C-138] in terms of achievement.

Q Then why do you say if you were talking about the

Coleman Report you were necessarily referring to achievement? A Because I am talking about achievement and the Coleman Report simultaneously and I think I had to be talking about test scores only.

Q The only thing in the Coleman Report is test scores? A Yes, sir.

Q Coleman and the report didn't tell you anything at all about increased achievement in other areas, just test scores? A Well, I am not sure I understand your question, Mr. Gray. What do you mean by other areas?

Q Whatever ones you were. Whatever you were talking about in your area of achievement aside from test scores. A Like occupational achievements, etcetera, as adults?

No, but the U.S. Commission on Civil Rights, because the Coleman Report had failed to do that, followed up and did the study.

Q That is the first time I have heard you [C-139] use the word "failed" with respect to the Coleman Report, and I ask you, sir, does the Coleman Report deal directly with racial integration?

* * *

The Witness: I would say partly. That is my problem, Your Honor.

The Court: All right.

The Witness: It was called for that in the 1964 Civil Rights Act by Congress to study equality of educational opportunity as it existed or did not in the United States. As part of that it necessarily had to study racial integration, but that was only, of course, one focus. It studied many

other things that would come under a concept of equality of educational opportunity. It was for that reason that the U.S. Commission of Civil Rights felt that further emphasis should be given to that component of equality educational opportunity that led to the Racial Isolation in the [C-140] Public Schools Report of the Commission one year later.

* * *

By Mr. Gray:

Q Yes, sir. This is where you discuss the Report on Racial Isolation. I will read you a paragraph referring to what was done in Racial Isolation.

"The second change is we took up an issue which we frankly thought the Coleman Report should have and didn't or just treated very peripherally, and that is the effect of racial integration directly. It did treat it in the Coleman Report, but quite literally three pages out of 800 given over to this, which we thought the Report called equal educational opportunity would hardly suffice. So we worked very hard to see within the major findings of the Coleman Report was there any additional effect which you could reasonably [C-141] ascribe to the racial mix itself apart from the social class of children, apart from the social class climate of the school."

Is that right? A Yes, sir.

Q So that any impression that I might have gained from your testimony this morning that the conclusions that you have drawn about racial integration stem from the Coleman Report really was an erroneous conclusion on my part? A It was erroneous, sir, if you took by that to mean the Report as it was published in that initial analysis. When I used it, I may have used it incorrectly. I was referring to not only what the Report put down about those

data, but about the analysis of those data. The Coleman Data which we have talked about and which, of course, was reanalyzed in the Commission's Civil Rights Study.

Q And you have given me now all the references to where I find all these analyses and this sort of thing? A Right, sir. But I do want to remind you that in my testimony this morning I talked about the study, not just the report, mentioning the over [C-142] 600,000 children, etcetera, studied. It is those data that are critical. We were unhappy in the Commission team because we knew the effects of integration data were in the Coleman data, and we thought the record had not given it the emphasis which the data deserved.

Q Well, now, let's talk about the Coleman Report. You indicated this was a report made for governmental purposes?
A Called for by the United States Congress, yes.

Q And has it been implemented, the recommendations in it? Have they been implemented? Has it been brought into law in any way? A It didn't have an action recommendation, to my knowledge, in it.

Q All right.
Now, let's talk about the Report just a little bit.
Is the Coleman Report a definitive study? A As I indicated this morning, Mr. Gray, no study in any branch of science is ever definitive, and the Coleman Report is certainly not definitive either.

[C-143] Q All right, sir.
You said also this morning it is not a longitudinal study?
A That's right.

Q By that you indicated it is as though you come in and you take a picture of what exists and you don't come back

to study what changes or anything, it is just what is there when you look? A Cross-sectional, yes, sir.

Q Would the Hawthorne effect be involved in such a study as this? A No, sir. The Hawthorne effect is a process effect, as you know. It occurs when scores typically will go up when you try something new, something innovative. Teachers are excited about it and so forth. The scores will go up for a while. They may recede when the enthusiasm of the new program recedes, but notice that is over a time. The Coleman Report doesn't tap into the Hawthorne effect.

Q Yes.

Would any of the other studies to which you make reference, were any of them longitudinal studies, and if so, were they affected by the Hawthorne effect? A Yes. A number of the studies I referred [C-144] to are longitudinal. The Hawthorne effect is always something that we try to be extremely careful to follow, which generally requires what we call technically a double-lined control. That is, the person who actually, say in the St. John Test, who actually gives the test to the children, say, at the end of the year or whatever, does not know what the hypotheses are, doesn't even know the nature of the study being done. Otherwise there will be an expectancy effect. You get effects like the kids will respond a little like the person giving out the test wants them to. You have to control for that. You have to control for the Hawthorne by taking repeated measurements, etcetera. I think, yes, I think the studies we have been referring to have done a pretty good job on that score.

Q But they are all subject to that danger? A Every social science study involving human beings is subject to both the Rosenthal and Hawthorne effects.

Now, Doctor, in a report or study such as the Coleman Report, is it possible to isolate causation? A No, sir. It is never possible to isolate causation in a cross-sectional study. We need longitudinal . . . [*sic*] . . . [C-145] can be attributed to racial isolation or economic class, or any other variable that was used in it, as far as that is concerned? A No, sir. I don't think that would be a fair statement.

Q Now, you think you can determine causation? A No, sir. I have got to make a distinction for you, I am afraid. You use the term, and I am not sure of the exact term attributed or associated with, we use the term associated with, correlation, relate to, and none of these terms in our view implies causation. They mean something relates to something else. That can be in cross-sectional data.

Q I didn't use the term very carefully, relations, Dr. Pettigrew, because that is what the whole report is based on, is the relations of the variables which are used. A Right, sir. But what the Coleman Report served to do for us in a massive way that no previous study had done, was to show us these relationships and to see the relationships, even cross-sectionally, is then to give you more apothesis than we have yet had time to study over time to, in fact, isolate, because [C-146] that is exactly what we have been working on since '66 and what my testimony was based on this morning.

Q Is it a fair statement to say of the Coleman Report and the reports that followed, that Coleman was very careful to point out in his report that could not be relied upon to ascertain causation but that many who have quoted him were not quite that careful to point that out? A Well, yes. Coleman himself, however in later publications has been

quite willing to make causal apothesis on the basis of his report.

Q In the report he makes it clear he is not pointing to the cause, is that correct? A Yes, sir.

Q What was sample response that he got? Was it high, low, or how? A I would say medium. It could have been better.

As a member of the Advisory Committee, I was particularly concerned about the response rate, I must say, even more than, I think, Professor Coleman. They made quite extensive efforts to get it up to where they got it. They got it to the level, roughly, of about 70 to 72 percent of the systems asked to join.

[C-149] * * *

Q What percentage of the first grade children who were questioned in this report were able to tell in response to the question the educational attainment of their parents? A I don't recall the percentage. It was relatively low.

Q Very low? A Relatively low.

[C-154] * * *

Q When was the Coleman—when did he take this photograph that we have or you have just described, the Coleman Report, that went in and took the picture? When was that done? A Fall and largely October of 1965.

Q And did he take a look at the first grade as well as other grades? A First, third, sixth, ninth and twelfth.

Q Doctor, what effect could the schools have had on first grade students who commenced their schooling in September

of that year, presumably, and were tested almost immediately after they arrived? A Very little indeed. And it was precisely for that reason he wanted, because it is a way of finding out a little bit about what children in various parts of the country, various classes and places and so forth, bring to school.

Q Was there any determination made of how long, as far as racial mix is concerned, how long [C-155] students had been going to school in that environment? A In that particular school?

Q Yes, sir. A No, sir.

Q No, sir.

But I believe you said on direct examination that while there is some, well, you said there is a direct relationship between what will happen in the school and the public's attitude toward the school, the expectations of the parents and the teachers have a great deal to do with what is achieved in the school? A Yes, sir.

Q And I believe you also said that your studies have indicated that they adapt very quickly to this and there is much greater acceptance after the fact, great apprehension before the fact, but quick acceptance after the fact? A I didn't say quick, but I said reasonably quick, I guess, fait accompli effect, yes, sir.

Q I thought you said it was a fairly quick effect.

Now, sir, let's turn to a term that has been used quite often with respect to this case. [C-156] "White flight." I believe you testified a little bit about white flight in the Norfolk case and said that you didn't—I am paraphrasing you now, and if I do it incorrectly, you will straighten me out—

but in general, I believe you said you didn't like to call it white flight? A That is correct.

Q But rather it was a movement of people for a prestige sort of thing? A I said, rather, I said it was always that I prefer the term middle class flight and it amounts maybe to much the same thing. I think it has some additional implications. I don't believe that whites leave the central city and go to the suburbs, for example, just for racial reasons. I do think racial reasons are involved.

Our studies of why people move at all bring up all sorts of reasons from closet space to street noise, but schools are also given, of course, as a reason.

Q Well, the point of my question, though, Doctor, is that the mere fact that a number of people move from the middle of a city to the suburbs doesn't necessarily indicate that it is all because of race. [C-157] I think you have answered that, that that is not true. In fact, you have this phenomena even in cities where there is very little mixture of races, do you not? A Yes.

* * *

Q I believe you testified once a school becomes more than a certain percentage black it rapidly becomes all black. Is that correct, that was a finding of the United States Civil Rights Commission way back? A Typically, yes, sir.

Q Are you familiar with a phenomena in Virginia, there are many counties that are predominantly black? A Yes, sir.

Q Are you familiar with the fact that many of them have been integrated now for a number of years, desegregated, I will use your term, desegregated for a number of

years? A I am familiar with the fact that there are some schools desegregated in some of those counties, yes, sir.

[C-158] Q You are not familiar with the fact that any of the counties have all of their schools desegregated? A I would have to take it county-by-county and look at the system.

Q Don't go far. Just go to Charles City. Only has two schools. Are they all desegregated? A I am not sure, sir.

Q Has about four. A I haven't been to Charles City.

The Court: How many did you say?

Mr. Gray: I believe Charles City has four. Four or five.

By Mr. Gray:

Q New Kent has only two. As they are, I believe, you would know, are totally desegregated, would you not? A I am not, no, sir. I am not sure.

Q If I tell you that New Kent County is the county which has gained its place in immortality by being the Green case and that in order to desegregate its schools, that it has only two, and they were paired so that one is a high school and the other one is an elementary school and only children in the county [C-159] go to school that go to school have obviously to go to one high school and one elementary school. You would have to conclude that it is desegregated, would you not? A Yes, sir.

Q But it has not become 100 percent black.

Now, are you familiar, sir, with the fact that in situations somewhat similar to this in Virginia, that this acceptance factor that you are talking about has indeed shown that while there was white flight in the initial years, the whites are now returning to the system? A Well, I am familiar

with the facts in the Norfolk school system. I know that their losses of whites is declining since their initiation of their last desegregation. They are not gaining whites, they are still losing, but their rate of loss, if that is the point of your question, Mr. Gray, does seem to have decreased, yes.

Q Well, are you familiar with the situation in Isle of Wight County, Virginia. A No, sir.

Q You do not know then, whether this acceptance factor which you have said will operate in [C-160] the schools to create better attitudes, better achievement, once they are desegregated, you are not familiar with whether that will also operate to diminish white flight and indeed induce those who have flown to return? A Well, sir, there are several changes in those situations from what I was testifying about earlier. In particularly the New Kent situation is a rural situation. I was referring to an urban situation where one in five Americans move every year anyway. So that is a much more mobile population than, of course, in the rural situation.

Now, in the Norfolk case, in the Norfolk situation, the school board, there is no, I see no data yet that I have received and I have received some very recent data from them, as recently as the end of this last school year, that would indicate that the loss of whites from Norfolk is about to stop. So that I frankly see nothing about this that changes from what I earlier said.

[C-162] * * *

Q All right, sir.

Now, if I understood you correctly, you indicated that if you have less than 20 percent black in a white school that constitutes tokenism and has harmful effects. Did you say

that? A Constitutes tokenism and has potential harmful effects.

Q That being true, if a political subdivision is confronted with the problem of desegregating its schools and has less than a 20 percent black population, would it be better for them to concentrate as many blacks as possible in some of the schools and leave some of the schools all white, or would you scatter the white and blacks across the system? How would you handle that? A Well, it would depend at what level you are talking about. If you are talking about Burlington, Vermont with two percent blacks, strongly would say no, don't scatter them over the whole.

Q Suppose you had about ten percent? A Right about ten percent, then I believe [C-163] you wouldn't have to shoot for ten percent in literally every school, but I think, in other words, there would be some concentration. But I don't think you would have to work to get 20 in every school.

Q Doctor, if you only have ten you can't work to get 20. A Yes, you can. It would involve a few all-white schools.

Q Would that be preferable? That is what I want to know. Would that be preferable or would you want to put some blacks in each school? A You would have to give me more facts about the social class, etcetera, because it would be a difficult decision.

Q Well, let's make them all the same social class. A All the blacks and whites are all middle class?

Q Yes. A Then I think I would go for concentrations a little heavier than ten, not necessarily 20.

Q You would leave some all-white schools? A There might be a few.

Q Doctor, what is the percentage of black [C-164] population in the United States? A Between 11 and 12 percent.

Q Well, as a nation we are in real trouble if it takes 11 percent, I mean takes 20 percent to avoid tokenism, we are in trouble, aren't we? A No, sir. We are not, fortunately. You would be quite right if the blacks were distributed absolutely randomly across the United States, but fortunately for us all they are not. They are concentrated in urban areas and particularly in the larger urban areas so that typically, though of course there are a few exceptions you can point to, typically blacks are concentrated in areas that make the 20 to 40 percent feasible.

Q And if you have areas where they have less than your 20 percent, you are going to have special situations to deal with? A Yes, sir.

Q And if you have areas where they have more than 40 percent, you are going to have special situations to deal with that? A That would be true if there were such areas. There are no such areas in metropolitan terms, Mr. Gray.

[C-165] Q This, of course, depends on how wide you draw the area? A Well, I am speaking in metropolitan terms.

Q You define metropolitan areas as Richmond, Chesterfield and Henrico? A That is what the evidence showed earlier, along with Hanover County.

Q Doctor, I thought I heard you say you live in Richmond. You do not now live in Richmond, correct? A No, sir. I teach at Harvard University.

Q Doctor, after you got to the 20 percent blacks in the school, I believe you said then you began to have some other

in the Honor Society and in all of the life of the school. Have you made any survey in Chesterfield and Henrico County to ascertain whether black children in Chesterfield and Henrico County are achieving this sort of participation in the life of the school? A No, sir. I have not.

Q Have you made such a study of what is happening in Richmond? A No, sir. Have not.

[C-166] Q So that if that is what we are striving for, we may already have it and you don't know? A My point on that was based on regional and national data. It would make the systems extremely unusual.

Q But Doctor, you are recommending to this Court in this case actions which might bring about what you think are the optimum results and you don't know whether we already have them. A I know we don't have the optimum results of this specific thing you are describing, that is reasonable proportional participation throughout the structure of schools. I do not have precise data on that.

Q Isn't that what, when you get beyond desegregation and get to integration, isn't that what it is all about with you, that they are really all a part of the life of the school? That is what the whole mechanism is for? A Yes, sir.

Q And you don't know whether that exists here or not? A Oh, I have good evidence otherwise that it does not. I can't say that for every school in the [C-167] Richmond system, but I would say that from what I know of the Richmond system at the moment, most of its schools are battling to become integrated but are desegregated and I would use other criteria for that in lieu of not knowing the participation function.

* * *

Q Doctor, I want to ask you just a couple of questions about a paper of yours to the United States [C-168] Department of Health, Education and Welfare Office of Education entitled The Case for School Integration. Are you familiar? A What year was that?

Q Well, I tried to find it, Doctor.
Can I approach the witness, Your Honor?

The Court: Yes.

The Witness. It sounds like about 20 papers I wrote.
I wrote it but I don't remember what year myself.

The Court: For the record, if you will return to the lectern to continue your questioning, I understood you to say that you did not write the paper that Mr. Gray just exhibited to you?

The Witness. No. I'm sorry. I think I have written the paper. I just don't know the year.

The Court: Oh, I see.

By Mr. Gray:

Q I might help by telling you that it ends up referring to the Kerner Report so it was subsequent to that, in any event.

Well, at that time, whenever this paper was written, you made the statement in here that there [C-169] are more segregated schools in the United States today than there were in 1945. Now, does that statement still hold true? A I am not sure. I think that paper must be about 1969, then, or late '68 after the Kerner Commission Report. At that time it was undoubtedly true. If you talk about desegregated schools it may not be true now, but I am not sure.

Q Well, do you know whether it is true in Virginia or not? A I don't believe it is true in Virginia if you are talking about schools and not systems.

Q All right, sir.

So that any effort that was being made, or any recommendations that were being made which grew out of the Kerner Report, the fact that there were a growing number of segregated schools rather than a reducing number of segregated schools would not be a concern in Virginia? A No, sir. I wouldn't push it that far.

Q All right, sir.

Now, Doctor, you discussed—well, let's stay with this and finish it up. A May I complete my answer?

[C-170] Q I didn't know that I stopped you. I am sorry. A You didn't really. But see, because I am not really just advocating mere desegregation, I want integration. I am not convinced that integration is increasing. In fact, I think maybe decreasing in Virginia.

Q All right, sir.

Now, again, in this paper, I will read you a full paragraph and a sentence. This is on page 86 of this document. This is referring to the Coleman Report. "He could only measure what exists now, not what might be done with the aid of new and innovative educational facilities. He did find that the social class of students attending a given school was its chief school variable of a child's achievement score. This perimeter could be measured crudely by tabulating the educational level of all the parents of all of the children in a given school. The higher their educational level the higher the academic achievement of all children of all

backgrounds, white and black, rich and poor, urban and rural, is likely to be.

"Social class milieu therefore turns out [C-171] to be more important for educational achievement than racial achievement."

That is the end of the quotation.

Is it fair to attribute that to you? A Yes, sir.

Notice it specifies achievement only and remember, too, my previous testimony that it may well be impossible to pull out integration completely from social class simply because of the correlation between race and class.

Q Well, the thrust of what I want to know from you is any conclusions that may have been drawn with respect to the results obtained in a school without determining the educational level of the parents of the children in that school are at least highly doubtful? A I don't think I would push it that far, Mr. Gray, but it is certainly one variable that I would like to see in educational facility studies, yes.

Q Now, Doctor, when you were asked what practices go on in the 20 to 40 range of your optimum mix, 20 to 40 percent black in the school, and you were asked what were the beneficial practices that went on, and I tried to take them down, you said the expectations [C-172] of the teachers, the attitude of the community, the counselors are being more realistic as to aspirations, and the administration is easier, far more efficient? A Yes, sir. And I did say those things. I added, at least at some other part of my testimony, that it was likely to yield white achievement equal to the all-white schools, improved black achievement compared to predominantly black schools, and yield more positive racial attitudes and behavior of both the white and black children in comparison to other types of schools.

Q But that isn't a process that goes on. That is a result that occurs? A That is an effect, yes, sir.

Q Let's deal with the processes that go on in the 20 to 40 percent range that bring about the desirable results.

You have indicated that once this process has begun there will be fairly prompt community acceptance and things will get better. A May I say that by way, though, Mr. Gray—

Q Yes, sir. A I would prefer to say that the Gallup data would suggest that that has happened, typically [C-173] been the case in the south. It is not universal in the south and other research suggests that the most important factor that would condition whether the fait accompli effect is to happen or not is positive leadership.

Now, if the leadership, in fact, continues to oppose metro after it should be ordered, I would not necessarily expect the fait accompli—well, I would expect the fait accompli effect to be delayed. It may be delayed quite a while until such time as the leadership led the way.

Q Now, Doctor, if we deal just with the schools of Richmond, you are not going to suggest that they wouldn't have the leadership necessary to do everything possible for the children in Richmond, are you? A I would anticipate the leadership from the counties, cities and states, if that were ruled, and that everyone pull, in fact, to make the plan work.

Q Specifically with respect to Richmond you would expect they can provide the leadership for the schools even if they just have Richmond schools, would you not? A Well, now, I am confused. I thought we [C-174] were talking about the acceptance by parents of the metro system?

Q No, sir, I am talking about the processes that go on in schools which have beneficial effects, and you expect them to be in the 20 to 40 percent range, but these are the processes.

Now, you say that leadership is an important aspect of what is going to happen in the schools, is that right? A Yes, but I am sorry. I think we are talking about two things.

Q Maybe we are talking about different things. A I am afraid we are confusing two things. The thing about leadership and fait accompli is about community acceptance of an exchange. You are talking about the process within schools, 20 to 40 percent. I have been discussing those two things separately.

Q Well, Doctor, those same processes will go on regardless of the percentage in the schools, will they not? A As I have described them, not necessarily, no, sir.

Q Well, the expectations of teachers will [C-175] be something that will be a plus or minus? A Oh, in that sense, yes, sir, they will.

Q So all of those factors are going to be present. So now, let's just look at the City of Richmond if it operates under Plan III. Does it have the leadership? Do the schools of Richmond have the leadership necessary to try to bring about community acceptance of that plan? A Yes, sir. But of course the school leadership is not the only leadership.

Q Well, I understand that, Doctor, but at least that factor they have.

Now, do you think that with proper training, proper preparation, the teachers could be shown what the expectations should be? A I think, Mr. Gray, that teacher training in that regard is important and I know the Rich-

mond school system is certainly trying in that, but I must say that from the point of view of social psychology, we rather strongly believe that training is a kind of cognitive, a mental thing, is not the major determinant of expectations. The kind of processes is a non-verbal thing that I am talking about. That is much more shaped by the situation, the condition, the tradition of the [C-176] community, etcetera.

I should also say that Plan III, I think, has leadership from the Richmond schools, but it lacks leadership support elsewhere, it seems to me, and I do not anticipate a fait accompli effect of acceptance of the parents in Richmond to anything like the degree that we are accustomed to seeing the fair accompli effect work. I am specifically speaking of the Richmond newspapers.

Q Well, with respect to the effect of the counselors in the school, can they not be educated as to what the realistic aspirations should be? A We can certainly try. I think you can improve it. I think you are under severe limitations, given the situation.

* * *

[C-177] Q All right.

Now, Doctor, have any of the studies that you have referred me to, or did the Coleman Report use as a variable in measuring educational achievement the time spent by a student traveling to and from school? A My memory on that is hazy, Mr. Gray. I remember there was a variable in there. I recall arguing for it on the Advisory Committee and I can't remember how I won, to tell you the truth, but there is a measure of it. Maybe just whether you are bussed or not bussed. I don't think it has much to do with time or distance, if I understand your question correctly.

* * *

[C-178] Q Doctor, in table four, table three, I find a listing of a percent of black in elementary schools having characteristics named at the left. A number of variables listed. Are there other variables than these?

* * *

A I don't think this is the complete list. I think this is probably, I think this is probably the more important.

Q All right, sir. Thank you, sir. That is really what I want.

These are the more important variables that we look at?

Recently accredited school, music teacher, remedial reading teacher, accelerated curriculum, low IQ class, speech impairment class, use of intelligence tests, assignment of practices. Open area, use of tracking, teachers having tenure, principal salary $9,000 or above, school newspaper, [C-179] boys' interscholastic athletics, girls' interscholastic athletics, band, drama club, debate team.

Now, Doctor, these are the important criteria that were studied. I take it then that whether a child spends an hour, hour-and-a-half, to and going home from school is less important than whether or not he finds a music teacher when he gets there? A Well, sir, you can't take that out, take the variables one at a time like that to interpret the report. The fact is that particular group you are mentioning, not all of them, but most of them you are mentioning, there were attempts to get at school facilities, that sort of thing. What you do, you don't want to use them one at a time. You put them in a scale and attempt to use them as one variable and combine many things together.

Q You have said you can't take out one variable and look at it by itself and draw a conclusion, is that right? Isn't

that what you just said? A I said for those you were mentioning, they are best formed in terms of scales or indices. That is what they are in there for.

Q You can pull out one variable, to wit, [C-180] socio-economic class, subparagraph race, which wasn't dealt with directly and draw your conclusions. A It was dealt with directly, just not enough directly in my opinion.

Q Three pages out of the book? A It was mentioned in other pages, too, but there were other pages. There were three in that particular chapter. Of course, there are other parts in the Coleman study, etcetera, etcetera. All of my remarks about it are just chapter three, as you are aware, Mr. Gray.

Q All right, Doctor. I am not going to get any help from this on the question of whether the time a student spends going to and from school will affect his educational achievement.

Am I going to get any help from that as to whether taking a child out of his home neighborhood by virtue of a lottery and sending him over to a school with strangers is going to have any effect on his educational achievement? A No, sir. Coleman did not anticipate the Metropolitan Plan in Richmond in 1971.

[C-183] * * *

Q But in any event, you know of no studies with the effect of this peer group spreading? A Yes, sir. I know of studies done on Project Children in Hartford, Connecticut which I think are very close to what you are talking about. There children were drawn, actually by a lottery, but they didn't call it a lottery. They drew at random. [C-184] They

could only take so many. This was from a poor and black neighborhood in northeast Hartford. The study was done by Thomas McMahon. There they drew a lottery, to use present terminology, of who could be bussed, who would have the opportunity to be bussed to the suburbs to presumably better schools being furnished by Hartford, and who wouldn't.

The parent had the right to opt out after the child was drawn, if he didn't want to.

The 80 to 90 percent of the parents agreed they wanted it. Then studies were done with the children who remained. Remember it was random, so we have good controls here now. If it is voluntary, it is not, you understand, good for the research but it is random. It is good for research. You see what happens to the children who stay on. Through lottery, children who went on into busses, to predominantly white schools in the suburbs. Then they had a mother on some of the busses, a mother from the neighborhood went. In some busses they didn't.

What happened was the children who did best were of all three groups controlling, now social class, race, etcetera, were those who were bussed to the predominantly white schools and from—where a [C-185] mother went with them. Next best were those without the mother from the neighborhood. Last, the school from which they emanated.

It is such studies as that, and in particular that one, that led us to believe that bussing is very effective if there is something worth bussing to at the end of the line. And for me, a 20 to 40 percent black school is something worth bussing to.

Q What was the racial makeup of the schools that those kids were bussed to on that test? A It varied considerably. In most cases it was below 20.

[C-186] * * *

Q I did understand you correctly that if you lower their goals you raise their achievement? A If you lower their goals from unrealistically high to medium and realistic goals, because if you lower it too much, you would have a negative effect which, by the way, is not unique to this plan, but that is the theory of achievement in psychology that unrealistically high goals or very modest to modest goals is how achievement people that have achieved in this world, moderate goals, just what they can get all the time.

Q Now, one final area.

I believe you said that nearby schools have an effect on the schools in an area, for example, which you were referring to.

The schools in Richmond were predominantly 60 percent or 65 percent black and the schools in Chesterfield and Henrico were predominantly white. This would have, in and of itself, an adverse effect on the schools in Richmond, is that right? A Yes, sir. I think it has an adverse [C-187] effect on the white children in the counties, too. A All right, sir.

If that be true, and you treat Richmond, Henrico, and Chesterfield as one metropolitan area and go through with this, this plan, what effect will the existence of these schools have on the counties surrounding the new boundary line that you would have, all of which are predominantly black areas? A Well, if the Metropolitan Plan was achieved and we had 20 to 40 percent schools, virtually complete for both white and black children, I think that would bring about envy, not only in the mixed ring of counties, but cities throughout the United States, and the effects of that, I believe, would be extremely positive, that is, we would

start then getting motion, I believe, to do something about other situations which don't approximate the Richmond Metro.

Q So Charles City that you have been referred to would have to have something done and would have to look in this direction, I suppose, to find predominantly whites? A I have concerned myself, you know, for the last six months with Chesterfield and Henrico.

[C-188] Q I understand that you have. Unfortunately we can't do like Coleman and come in and take a picture of this area and forget everything else. Don't you set up a domino effect that once you do this area, if the existence of Richmond has the effect on the adjoining counties, wouldn't the existence of the Metropolitan have an effect on the existence of those counties adjoining? A I believe that they would, but it is not a domino theory in the way it is used in areas negative to the United States. This is for me, would be a very positive domino, if in fact it led to change. If it led to change in other areas it would be good. If, in fact, in a way you have stated my principal interest in this case, and that is, if Metro, the Metropolitan Plan were introduced in the Richmond area, I believe it would be a positive model for the whole United States that would, in fact, act as a domino and I hope it would act as a domino.

Q If we start ,we have got to go? A If we start to really have integrated societies, yes, sir. We can't do it part way.

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[C-189] * * *

Cross Examination

By Mr. Byrne:

[C-191] * * *

Q Do you realize in the plan that you are proposing here, or that you are enforcing or recommending, however you want to say it, sir, contains 44 schools that already start out with 38 percent or better black students? A Yes, sir.

Q You realize that.

Do you realize that 28 schools contain 39 percent or better black students? Now, sir, getting back to my previous question, if there is a lack of leadership in the system, you said that you would expect the fait accompli to be delayed? A Well, there is, I want to make one change, sir. I didn't say in the system. I don't anticipate any problems.

Q Lack of leadership in the metropolitan [C-192] area? A What I am merely talking about is the political, mass media, etcetera, not the educational leadership which I assume.

Q Were you talking about all leadership? A Yes, sir.

Q All has to jell or it is no good? A I agree.

Q The educators can't do it by themselves? A That's right.

Q They have to have help from the parents and help from the news media and every other media involved? A That's right.

Q Now, assuming that there is a lack of leadership in the metropolitan area. You would expect the fait accompli

to be delayed considerably, would you not? A If it were a total void, yes.

Q The longer that is delayed it increases the possibility for resegregation in those marginal schools, doesn't it? A If you mean by that the longer the fait accompli effect is delayed the more whites would [C-193] not be in the metropolitan public school system as a whole, yes, I would agree.

* * *

Q Well, suppose you have a metropolitan area that is bisected by a State line. Do you consider that an artificial line? A It is in one sense, yes, sir, social science sense.

Q Sir? A Social science sense. Perhaps not in a legal sense.

Q Well, in the sense that you use it, it is not a line? A Yes.

Q You would have no difficulty crossing that [C-194] line to put in your 20 to 40 percent desegregation? A Well, we would have practical difficulties, so in looking at the legal difficulties, in looking at this metropolitan area throughout the United States we have checked to see in fact just how often would State lines cause us difficulties along the lines you are suggesting. It is quite rare. The most, the only really blatant example—you can find minor examples—a blatant example is the New York Metropolitan area.

Q How about Washington, D. C.? A Well, that is, of course, we are not talking about State lines there.

Q Talking about a district and we are talking about a state line, too, are we not, in the metropolitan area of Washington? A Yes. And District of Columbia, certainly.

Q That's right. Includes, Maryland, Virginia, and the District? A Yes, sir.

Q Now, Doctor, if I understood you correctly in your definition of desegregation and integration, the optimum desegregation is 20 to 40 percent mix, is that [C-195] right, in order to obtain integration? A Well, that maximizes the opportunity of obtaining integration, yes, sir.

Q All right, sir.

Isn't it true that in order to do this in any system of education, you have got to eliminate the public and the parochial schools? A To eliminate both the public and the parochial?

Q I mean the parochial and private schools, excuse me.

In order to get the 20 to 40? In order to achieve ultimate integration you can't have a private and parochial school system that does not have a 20 to 40 percent mixing, isn't that true? A I am sorry, Mr. Byrne. I don't understand the question.

Q I am trying to get, Doctor, how far do you want to take your theory of integration? You say once we start integration we have got to go on. I assume in all facets of life? A I was talking about public education, of course.

Q Restrict it only to public education? [C-196] A Oh, I would like to see the parochial schools participate in integration. The fact of the matter is only six percent of black Americans are Roman Catholic, so as long as Catholic students are the—of course they are the principal students at parochial schools, it is difficult to reach 20 to 40. Precisely for that reason I have advocated, as you know, cooperation between parochial and public schools in order provide for the most part middle class whites for public school systems

and to provide black students and integration for the Roman Catholic students, particularly as a part of metropolitan park plans and other ideas such as that.

Q In fact, you made the statement that the second major cause of segregation in central cities, or urban areas, is the private and parochial school system? A I usually say a third, sir. I don't just say parochial and private. Demographic patterns and the utilization of schools, the urban areas. Those two, of course, come together sometimes. I treat that as one factor, you are right. Next I would give private schools. That is not a very big factor in the south where the private school development has not gone on [C-197] nearly as extensive as in other parts of the country. The cities I had in mind in particular when I have written that several times, are cities like Philadelphia, St. Louis, Boston. In Boston, St. Louis, there are over 40 percent of all the public schools, of all the school age white children in the central cities going to parochial schools. In Philadelphia, the percentage is over 60 percent.

Where, obviously there, in addition to metro you should look to possible and Constitutional methods of cooperation between the private and public schools.

That was the third of that particular statement.

Q This would call for an amendment to the Constitution regarding separation of church and state, wouldn't it? A No, sir. As a lot of lawyers don't seem to think so, obviously I am not a lawyer, the Vermont plan has been put forward, the one that I advocate, and Paul Friend and others assure me you can get away with that legally. That is the Vermont plan would involve selling land close to the metropolitan park, say, to the Roman Catholic Church, at [C-198] precisely what it is worth. But then the church builds schools.

As you know, parochial systems in general are hard up for funds these days and they can't built expensive things like physics labs and chemistry labs and athletic fields. They share all that with the public system and instead of the shared time arrangements, many northern cities have now, which are quite unfortunate. The best way to generate their religion and prejudice I have ever seen, is to bring kids over to a class and take them back as a class. In the metropolitan park idea with the Vermont plan, which I presume to be Constitutional, a Roman Catholic child, in this case a parochial school child, simply crosses grass, not streets, comes as an individual in a class to participate in public school programs at the time that it fits his program.

I have talked about that idea with many parochial school leaders throughout the country and they are extremely enthusiastic. I have talked to public school leaders and they seem enthusiastic. I haven't hit anybody that didn't like it, really.

Q Isn't it true that segregation occurs in class, religion, in schools, is that where it chiefly occurs? [199] A They are certainly three big items, yes, sir.

Q All right, sir.

Now, I believe you said one of the major causal cases is that housing segregation causes school segregation. You can always say school segregation under some circumstances would influence housing segregation? A Yes, sir.

Q I am always interested in implementation. How would you propose to correct that? A How would I propose to correct housing segregation, sir?

Q Yes, sir. A I have just written a paper, as a matter of fact, for HUD on that very subject. I won't bore you with the whole paper, but the burden of it really is that the chief

reason why we have housing segregation in the United States by race is federal policy. Federal policies from the initial housing act in 1935 are what basically segregated by race. There are other things that contributed to it, to be sure, including racial discrimination and so forth in the real estate industry, but we need to change federal policy.

[C-200] I can't go into it all, but one suggestion, for instance, is to completely turn around the old policy after World War II which developed white suburbs. The federal government, in effect, gave lower interest terms if you built, if whites built a home in the suburbs. They discriminated, the Veterans Administration and FHA did against, as has been demonstrated, not just my opinion, against blacks doing the same thing. They discriminated fully against whites for mortgages for central city homes by having higher interest rates.

Now, that suggests to me that an effective federal policy would be to do the exact same thing but in reverse, that is, give lower interest rates to blacks who wish to move to the suburbs and give lower interest rates to whites who wish to build or rehabilitate housing in the central city. That is hardly a complete answer to your question, but that is the kind of proposal which the present evidence would lead me to recommend and I have recommended to HUD.

Q So we get to further government control before you can correct this? A Well, in this case, sir. Like most [C-201] segregation in the United States, I think it was largely government produced, and if you will allow me a terrible pun, I think what the law giveth, the law can taketh away.

* * *

Q Do you recall also making this statement [C-202]

when you were discussing the 26,000, the existence of 26,000 school districts in the United States?

"We don't have 26,000 good ones or anything close to that number. To me, this implies that one of the basic needs of many of our urban areas is consolidation, no decentralization of schools, and particularly it implies the need for metropolitan cooperation before consolidation."

Do you still stick by that statement, sir? A Yes, sir. I would prefer in the Richmond area, or any other metropolitan area, if the suburban school systems and the central city school systems could get together and work out such a metropolitan plan and would never have a case and be done efficiently and effectively, and on the best educational terms. The problem is, I am afraid, that since cooperation as envisioned in this metropolitan plan is made impossible when responsible authorities refer to Richmond rotting in hell and so forth, which strongly suggests that you will not have that kind of cooperation in this area unless, in fact, you consolidate.

Q Well, you took that statement a little out of context, didn't you, Doctor? [C-203] A How, sir?

Q It had reference to a water and sewer agreement. A It doesn't look good for the possibility of cooperation in any area, I am afraid.

* * *

Recross Examination

By Mr. Lucas:

[C-212] * * *

Q My cross examination went through several examinations of black schools, dominantly black schools in a city such as Richmond surrounded by white bedroom com-

munities. We have discussed this in terms of the perception of the child. I know sociologists and lawyers may define terms differently, but looking at the Richmond school community and the projected enrollments in the Richmond school system under Plan III and the proximity in an urban area of the Henrico and Chesterfield white belts, could you describe the school community as a desegregated or a segregated school community? A You are referring now to the entire metropolitan area, Mr. Lucas?

Q As limited by Henrico, Chesterfield, and Richmond, yes, sir. A Yes. Then I would say it was a segregated school community in that sense.

[C-215] * * *

BENJAMIN E. CARMICHAEL

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

* * *

Direct Examination

By Mr. Little:

Q Would you state your full name, please, sir? A Benjamin E. Carmichael.

Q What is your present position, Dr. [C-216] Carmichael? A I am Director of the Appalachia Educational Laboratory.

Q Doctor, reviewing them if you will, give me some of your biographical highlights as they relate to your experience in desegregation and education. A My first significant experience with the desegregation question or prob-

lem began in 1952. During 1954 or '53 I was a member of the team which collected the data on the dual school system of the south covering the 17 southern states that maintained dual school systems at that time which was done for the purpose of providing data for Harry Ashmore's book, The Negro and the Schools which was published the day before the Supreme Court decision in 1954.

Q Was it outdated? A Now, you mean is it now?

Q Was it? A Was it?

Q The day after? A Oh, no, I think not. Those data did cover, in terms of that time period, from the school year 1940-'41 through 1951-'52.

[C-217] Following that, I spent time in South Carolina where, in terms of practice in school administration, you have a very interesting experience, or did in those days, with the problems of desegregation.

Following that, I picked up again and directed the updating of the data which we collected for the Harry Ashmore study.

That was a five-year period up through 1957-1958. I believe that was published under the title of Progress and Problems in southern schools, which was basically extending the data and the study which we had conducted previously.

Following that in terms of your question, I served six years as superintendent of schools in Chattanooga, Tennessee and began immediately in 1960 on taking that position, planning and being responsible for the administration of desegregation of that school system during my six years there.

Those were kind of mixed between research and administrative experiences.

During '65 and '66, I was also a member of the Advisory Committee on the survey of equal educational opportunity which Dr. Pettigrew has discussed extensively here.

[C-218] Also served on the Advisory Committee for the study of, which followed that, Isolation in the Public Schools. During that time I reviewed several proposals which were to be funded under the Title IV in the Civil Rights Act. That sort of thing which dealt with attempts to solve problems of desegregation, integration, in the schools.

Q Where are you a native of? A I am a native Tennesseean.

Q Doctor, a great deal has been said in the area of desegregation about quality education and the affirmative duty on school boards.

Would you take these two broad concepts and point out the interrelationship, if any, as you see it, in a biracial community? A I would begin in response to that, Mr. Little, with the definition of quality education, as I would see it.

It has been defined here several times, but each of us probably would put it a little differently.

I would try to build it on a basic definition which has to do, of course, with providing or creating within the individual child a base of knowledge which I think we talked a great deal about [C-219] in terms of academic achievement.

Secondly, I would define it in terms of the development of both physical and mental skills to use that knowledge.

Thirdly, I would define education in terms of its responsibility for developing the capability. Some would say the actual behavior itself. I guess I would come more nearly

stating the capability of expressing desirable behavior in relation to one's future, his aspirations and so on. This gets it over on the attitude side.

Now, that is what I would submit as kind of a basic definition of education.

If I lift that up a step higher, I would put it in terms of it being the foundation for citizenship. I think that is probably quoting someone, but that is putting it a little broader in terms of education and quality education as I am thinking of being the foundation for citizenship.

Then, secondly, at that level we talk about it being an instrument for transmitting cultural values. This is where I think we are moving into the realm of introducing the child or the person into this world, so to speak.

[C-220] Finally, still at that same level, we talk in terms of it preparing him to interact with or to be a part of his environment.

Now, those are kind of conventional ones. I would like to take all of those and put them together, for myself as I see it, relating to this kind of question, and as I have considered for several years, in relation to it.

These things say for me in terms of the subject that we are discussing that quality education as we provide it through the public schools is that which prepares the individual to function without restraint in the area of knowledge, in the area of attitudes, which deals with his self-confidence, his feeling of being a total dynamic person that can have some control over his life, what it is going to be, you see.

I am trying to say that this knowledge and these attitudes are intended to produce the person who does not have to rely upon all others as to what he can do and can't do, what he can be and can't be.

Well, that is as far as I would try to go to the quality education. That is my concept of it as it relates to this kind of thing.

[C-221] Secondly, I think you asked the question in terms of what affirmative duty do we have as educators.

Q Well, the effect of the affirmative duty to integrate on educators, really, in that context. A The effect of that on administrators, or any of us associated with this whole problem of education without requirements of any place, is to establish those conditions which make that kind of education possible, you see.

We talk in terms of somewhere it is mentioned we have the responsibility for removing the root and the branch. On the one hand I think we are talking about segregation and I think we have talked more about removing the root and the affirmative responsibilities of us at this point, you see, is to deal with the branch. That is, I interpret it being, the results of these conditions, of these conditions. So I think that is where we find ourselves with regard to the kind of question that is before us.

Q Now, Doctor, in your judgment is the development of academic schools any more or less important than the development of attitudes and values? A I don't think anyone can possibly say [C-222] that they are. Both are desired at the highest possible level of achievement. Highest on one hand in terms of creating the ability of an individual to be and to become.

On the other hand, the freedom of mind, the confidence that one can be, and the ability to take his self, his place along with others, in doing these kind of things without artificial restriction as a result of his race or standing in life and so forth.

Q All right.

Well, then, what effect, Doctor, in your opinion, has the existence of this affirmative duty to integrate had on the basic objectives of quality educational public education? A State that again, please.

Q What effect, if any, has the affirmative duty to integrate had on the basic objectives of public education?

Well, let me ask this: In a biracial community, is there, has there been an element added to the definition of quality education? A During the last 17 years there certainly has been a redefinition, and there has been added to it on the part of almost any one of us that will try to [C-223] deal with this question today. What I am trying to say is that the 1954, you know, I didn't see it this way in terms of the responsibility, it is the kind of thing that has grown to confront us more and more as we have tried to deal with solving the problem. And indeed, in terms of trying to provide for the black child the kind of education that I tried to describe.

Q All right, sir.

Do you, as an educator, make any distinction, Doctor, between what has been referred to as tokenism or desegregation on the one hand and integration on the other? A Yes, I think we have had good definitions of desegregation as far as they went, and that definition, by the way, has changed, too, as I see it.

Some six and seven years ago the kinds of definitions generally given in this Court in terms of bodies being together were pretty much accepted as desegregation. But I think the definition and requirement for that even goes further at this time, as it has been established.

That has to do with the statements that we hear with

regard to creating a unitary school system [C-224] which has no component which can be identified with regard to whites or blacks, you see.

Q Right, sir. A So that that, to me, is an extension beyond those original definitions that we dealt with.

Q All right, sir.

Now, since working with us in connection with this case, have you become generally familiar with the racial composition of the schools of Richmond, Henrico and Chesterfield as separate systems? A Yes, sir. I have become generally familiar with them.

Q Now, in light of the disproportionate ratio between black and white in these three systems, how would you, as an educator looking at the Richmond area, define meaningful integration in this area? A I would define meaningful integration in the metropolitan area that we are discussing here as that condition which can exist in school situations which can remove as much consciousness as possible on the part of every child that he may be of one race or the other, or that there may be any restrictions on him as an individual as a result of this one race or the other as to what he can achieve in life. That is [C-225] on the one side of the restrictions.

I, at the same time, would like for it to be known, and always known in school situations, that neither do I, as an individual, think in trying to put myself in the place of the child, have a synthetic advantage over another child because of my race.

Q Well, applying that to Richmond, then, let's assume that the Richmond racial composition, the black child in the Richmond system, sees himself in the 65 percent ma-

jority. That he sees a great many other schools in Richmond, if not all, approaching that limit, and he sees the schools in Henrico and Chesterfield. Have you put him in this environment for quality education which you have previously discussed? A In response, in trying to respond to that question, I would like to introduce a consideration that I don't—well, I have to introduce a consideration before I can respond to it adequately.

Let me stop a moment and ask you to clarify something for me.

Were you projecting that toward the situation as it exists?

Q As it exists today. A Today.

[C-226] Q Assuming it does today. A With Plan III and the county as it is, how do I make the interpretation?

Q That's right, sir. A I can only respond to or describe the situation as I see it in terms of what produced it. That is to say that those conditions which produced the attitude that is felt by the black child today coming from many directions, from home, from school, from the community in which he lives which makes him feel inferior. And then when he is at a school where the percentage of enrollment is 65 or so black, he will continue to either have the feeling of being inferior and trying to fit himself into life along that pattern, or becoming very hostile toward his society and being determined to fit himself into life by that means.

Q All right, sir. A And you know my interpretation of the enrollment as they have been provided and so forth leads me to believe that—well, to take the position in the City of Richmond, the old, the existing Richmond district, that is the only thing that can happen. Only six percent of the black children would be enrolled in schools meeting

that 20-40 criteria. Only six-and-a-half [C-227] percent of the white children in that city would.

Outside of the city in the two districts being discussed, we know that the situation is opposite. The problem results from the fact that although in all three school districts, what the situation really is between the black and the white, and to continue to live in the white circle, for example, without this exposure that has been discussed here, in effect, is living the lie and is known by youngsters and is not going to contribute to the kind of attitudes and behavior that I have tried to postulate is necessary.

Q This would be known, you feel, and have an adverse affect on blacks and white? A It is known, yes, the answer is yes, it is known by adults and it is known by youngsters.

Q All right, sir.

Is it fair to characterize what you are saying then in light of your previous definitions of quality education, the necessity for the environment which can deal not only with achievements but with the attitudes and values, that leaving the situation as it is with Plan III in Richmond, the separate system for Chesterfield and Henrico, that a basic element of quality education would be lacking in all three systems? [C-228] A It undoubtedly will. It can't possibly produce the kind of attitude and value necessary to practice Americanism.

Q Now, Doctor, you are briefly aware of the fact of the nature of this suit is that basically that the plaintiffs were seeking equal educational opportunity. In your opinion as an educator, will the implementation solely of Plan III alone provide them effective relief or meaningful relief? A

My answer is no and it is based upon my definition as I gave it for this occasion.

Q As an educator as you look at Richmond, Henrico, and Chesterfield as separate systems, do you find it difficult to predict what is happening and what will happen to the three systems in the future insofar as racial composition is concerned? A No. I don't find it difficult to predict what will happen. They will continue two whites and one black.

Q In other words, would you say that the systems in the metropolitan area 17 years after Brown clearly could be identified as two white systems and one black system? A That is the way I would classify them [C-229] at this point.

Q Now, are you generally familiar with the plan of consolidation? I believe you heard it presented by Dr. Little. I think you have had other opportunities to review it. A Yes. I am familiar with it.

Q Now, would you compare what would be your evaluation of a plan similar to that, not necessarily this plan, but a metropolitan plan seeking a viable racial mix, which happens to reflect approximately the racial composition of this community? How would quality education, in your judgment, be affected as opposed as to not having a metropolitan system and continuing the three separate systems? A The metropolitan system, whether following precisely the plan submitted here or an approved one where it can be improved by those who have responsibility for it, so long as it is removing, by the previous discussion and classification that I have tried to give, so long as it is removing the connotation that this is either a black or a white school, then it has the chance, you see, of producing in the youngsters of those schools the kind of attitude confidence in self and aspira-

tions and so forth that are not restricted [C-230] by imposing some kind of synthetic restriction on them, which, the point I am arguing again is to remove those kind of things so that whatever youngsters have the capability of being, let them be it and provide us the environment in which we can produce it in education.

Q All right, sir.

Well, purely from an educational standpoint, do you regard the boundary lines between Richmond, Henrico, and Chesterfield as having any educational purpose or educational value? A Well, the organization of schools systems down through the years have been problems to those of us who have responsibility for them. We have drawn district lines which cross county lines, you know, in some states. There are some of us that have argued for maintaining county, separate city administrative units. I am confident that we have not reached the ultimate that, you know, we will continue to try to examine the appropriate organization to accomplish the things that need to be accomplished in education. This one is almost an exciting refreshing one that would come forth with the possibility of solving a problem that is hounding American education, both in terms of dealing with the problems of the disadvantaged [C-231] and the problems of the minority people.

In that regard, I view it only as an evolution, really.

Q A desirable evolution? A Desirable evolution in coping with our problems.

You know, I wouldn't want to support it if it weren't a desirable one. I just assumed that.

Q All right, sir.

Now, aside from coming back to the proposed plan that Dr. Little presented, or the one modified or another type of

plan embodying the same basic principles, aside from racial consideration, do you think his plan from an educational standpoint of management administration to be sound and feasible? A I do consider it to be sound and feasible. I could not have sat through the—I could not have sat through the presentation the first morning here on the community of interest without recognizing that there was here a possibility to solve some problems that cities have whether they have race problems or not.

The list of things that can be done through this kind of system as cited, I think, by Dr. [C-232] Little, bears on this, I think. The literature lists even more kinds of things that ought to be performed.

Q Well, aside from racial consideration, does the size of this system bother you, 107,000? A Does not bother me because all of us know of the large number of school systems across the country that are larger.

Q Well, now, again, aside from racial considerations, do you feel that there are educational benefits to be derived even over and apart of any racial problems? A There are educational benefits to be derived if we shoot toward a new kind of education and new kind of benefit. To take some of our old practices and some of our old answers and try to apply them and to fit them into it, I don't think we have a great deal to achieve. But there are new systems of operation. There are new approaches to instruction that are being developed. There are new services required on a level that even the school systems here are not very well prepared to perform.

If I took you to the field of research and development as an example, you see, if you define educational development in its truest terms today and [C-233] you try to make it

comparable to that carried on by Union Carbide in industry, the capability isn't here for that kind of thing.

Q You mean in Richmond, the separate systems? A In the separate systems for real development of new practices and products for education.

Q Can you enumerate some of the other benefits that you can see from a larger system that perhaps the individual systems could not do as well? A I made this kind of listing. This duplicates some of those read by Dr. Little, but in addition to these already referred to they cover testing, they cover, I don't believe he mentioned computer service, which is a definitely one [*sic*] that fits exceedingly well on a large basis; educational evaluation, which is rarely performed adequately for us; educational television, I don't believe he mentioned that one. He did mention central purchasing, general record keeping, vocational technical education, staff recruitment, I think, but those are the kinds that he mentioned. School plant planning and construction. Another one not mentioned was media centers. These are the kinds of services that he mentioned and that I have listed [C-234] that are important considerations for this kind of system.

Q All right, sir.

Doctor, I would like to come down to the actual organization of the structure and simply get your views on certain features of it. In your judgment would it be preferable if these three systems were put into one to have a single board or would it be preferable to maintain a separate school board for each political subdivision? A As I understood it, it is necessary as a component by the State Board of Education to establish one board.

Q But apart from the requirement? A Well, still with regard to the consideration here in the requirements, I would want one board. There are conditions that I would project, and I should hope would occur, in which case I think there are other possible arrangements. I think these may evolve, you see, but for the conditions here under study and of which, as far as I am concerned, this is the only, this represents the position that I would want to take with regard to the requirements. Then to me the strong centralized board is a must.

[C-235] Q All right, sir.

Now, you have heard a lot of testimony, Doctor, a part of it related to the problem of assigning pupils. We heard a lot of discussion of the lottery system and the island zoning system. You have heard the objections raised to both, but I would like to get for the record your preference as between those two concepts and whether you think they can realistically work? A My preference is the lottery system as compared with the other three systems that have to be discussed.

Did you ask me to give my reasons?

Q Yes, sir, if you would like to. A I would give my reason with regard to choosing the lottery system over, say, the island zone system, which are really the only that I would compare.

I would not choose island zoning for these kinds of reasons.

Number one, it is nearly impossible on the part of the school administrators to make those decisions as to which island, where it is going to be located and so forth.

Secondly, it is nearly impossible to [C-236] keep it stable for those of us who have dealt with school zoning know that it isn't unusual to change a dozen school zones at the be-

ginning of each school year where we are working under that. And they are piggyback. You take off one and give it to the other and keep adjusting on around. So this always is affected in the geographical school zoning.

Thirdly, I cannot see that that will give the stability in the community that you are trying to establish because you still, that just creates those black islands or white islands and so forth, because that says that if I move here, as things stand now, then I go to a particular school, you know. So you go on all through the process of selecting that.

So I would choose the lottery system as opposed to it. The lottery system has difficulties, too, and they have been discussed here, in terms, you know, of having to travel further to select the students and so forth. But it is strong in terms of maintaining the stability. It does have greater objectivity. It is easy to adjust it to requirements if there are any changes in the beginning, so that my preference would definitely be the lottery approach.

* * *

[D-4] PROCEEDINGS

(August 19, 1971) (Thursday at 10:40)

The Clerk: Civil Action 3353-R. Carolyn Bradley, et al. versus School Board for the City of Richmond, Virginia, et al.

* * *

(Dr. Carmichael resumed the stand.)

Direct Examination
(Continued)

By Mr. Little:

Q Dr. Carmichael, when we recessed yesterday, we were discussing your views and your opinions with respect to certain organizational features of the proposed metropolitan system of schools. [D-5] I believe you were in the courtroom when Dr. Little gave his view as to the methods to be used or the financing of both operating costs and capital expenditures for the system, were you not? A Yes.

Q What is your opinion as to the feasibility of that method of financing for this system? A It seems to me that under the conditions that it is a very appropriate means to finance it and it is a fair and equitable means with regard to the three subdivisions, or the three political subdivisions that would be involved at this time. It is a per pupil, proposed per pupil amount to be shared in accordance with the number of pupils being educated from each of those political subdivisions, and that is an appropriate one, as I said.

Q All right, sir.

Doctor, do you also recall Dr. Little's testimony, to a limited degree, at least, which indicated the present in-

volvement of the State Board of Education and the Superintendent of Public Instruction in education in Virginia. Were you present during that time? A Yes, sir, I was.

[D-7] * * *

By Mr. Little:

Q From your point of view as an educator what, purely, purely from your position as an educator, what do you think would be the appropriate role of the State Board of Education and the Superintendent of Public Instruction in making this consolidated division work?

* * *

[D-9] A I did not intend my answer to be legal in any way. I mean for it to be strictly—

The Court: As an educator what do you feel the role is?

The Witness: The role of the State Board of Education and the State Superintendent of Schools is to improve and maintain a quality program of education throughout the State. As far as race, desegregation or integration are involved, it should be predicated just as any other area or process in an education is treated, given the same positive leadership and so forth which is furnished by State department or State Board of Education in all education.

The Court: I am not sure that was responsive to your question, Mr. Little, but maybe if you are satisfied.

Mr. Little: Yes, sir. I think it is.

The Court: All right, sir.

By Mr. Little:

Q Dr. Carmichael, under the proposed plan, are you, as an educator, concerned about the so-called violence being

done to the neighborhood school concept? A No, Mr. Little. I am not. I would make [D-10] this kind of explanation of such an answer. There is a great deal made of the neighborhood school. The basic point for making it really is based upon the theory of what we call in education a community school. A community school in education is based upon the theory that there ought to be greater action between school personnel and parents relative to the process of educating children. That is, that there is great involvement, that there is a relationship between individual parents and their teachers which concern the education of each child.

And to the best of our abilities, we have tried to develop that. But we really cannot claim that we have developed this process sufficiently to make any great difference in education as we now operate. That is what we really want to be saying with regard to the community school. That that is not what we really say and do in practice. We reduce it to the fact that it meets our convenience, really. In a community and so forth it meets our convenience. We put it on a convenience basis.

You will see decisions exercised in this regard with the purchase of residences and so forth. No one can be against convenience, of course. We like [D-11] to have our lives patterned for us as convenient as we can. But the point I am trying to make is that educationally it has not been of any great significance. We cannot—can furnish data or prove that it has, you see, been a positive force in education. We have got these patterns over the many years where the concept of either community school or neighborhood considerations have been ignored in terms of where we took children to school.

So that I do not imagine here, it is not my opinion here, that great violence is being done to a concept which indeed is having any influence presently, you know, in terms of the quality of education.

Beyond that, what is the community today? In all of our lives we participate across a large area in a community of this type, you know. We associate ourselves with clubs, with churches, with many kinds of activities, which means that there is not a central focus for many of us with regard to any particular area of our lives and so on.

Q All right, sir.

Dr. Carmichael, one more question, then. Are you concerned about the principle of bussing?

[D-12] We hear so much about bussing and the evils of bussing. How, as an educator, do you view the concept of bussing? A I think it would be closer related to the comments that I just made.

The history of bussing in this country is old. I have been directly associated with it for several years, including my own education.

We have no proof one way or the other that learning or achievement in school is increased or decreased relative to transportation, carrying us to or from school a small number of miles or a large number of miles.

There is not being proposed here in terms of the actual time and so forth involved in transportation, bussing, there is not being proposed here any requirements or any hardships and so forth that you can't find exaggerated much more than that or practiced much more than that in many places in the country within this own State, I would say.

* * *

[D-13] Cross Examination

By Mr. Lucas:

[D-14] * * *

Q Dr. Carmichael, there has been some talk about the limitations of Metro. Rather, I should say, the question was why not go to the far ends of the world and take in all of these counties. I take it that it would be reasonable to have some limitations on how far children travel to get to school, is that correct? A Yes.

Q And State law usually provides the maximum limits that children can travel one way on a bus in terms of time? A I am not familiar with maximums established by states.

Q Are you aware that in Virginia people were bussed along State lines to surrounding states for the purpose of maintaining segregation? [D-15] A I have seen the reports on that kind.

Q Are you aware that there were set up high schools which served the four-county area and where black children were bussed away from high schools in their counties to another school, a black school, set up so that it could accommodate all of the black high school students in a four-county area? A I am not familiar with the four counties that you are talking about. I am familiar with an instance or two, and many of them across the entire south, of course.

Q Now, you have been superintendent of a school system, city school system, I think, you served for about six years in Chattanooga, is that correct? A Right.

Q Speaking not from a theoretical point of view but from a practical point of view in terms of real people oper-

ating a real school system, do you see any practical problems in operating the school system besides as proposed in the Metropolitan Plan for the City of Richmond? A Yes. There are practical problems, but there are practical problems with every major change [D-16] that we have ever had in education. We have had practical problems in great dimension for—well, throughout our history of dealing with the desegregation problem. I don't see them any greater, necessarily, for this particular proposal than they have been for us with those that we have encountered in the past.

Q Historically in American education there have been consolidations of schools over various periods of times, school systems, also, is that correct? A Yes.

Q And these involve a judgment that must be made in order to provide a better quality of education? A Yes.

Q The states' department of education generally had roles in these consolidations? A Yes. There is first, usually, a legal provision for the method by which it will be done. As far as I know there is no state that doesn't have some provision of that type.

They disagree considerably as to particular points.

In other instances there have been the direct moves from the legislature through the state [D-17] board of education to create certain times of consolidations, namely the 29 intermediate units for the entire state of Pennsylvania which went into operation July 1. That is a type of merging of some eight to nine hundred school districts. There are all kinds of forms of this type of merger pulling together and so forth.

Q Traditionally in order to effectuate these mergers it has usually been necessary for outside authority to come in

and set up the perimeters for the merger, is that correct? A Perimeters are set up in a case that I just cited. This did come from legislature through the state board.

On the other end there are those provisions of, if indeed you attempt consolidation, that you go through certain steps of referendums and so forth. There is this continuum of approaches to merger.

Q As a practical administrator, do you see any educational reasons for the boundary lines of Henrico and Chesterfield County and the City of Richmond, some compelling reason why these should serve as barriers to the assignment of children? [D-18] A Educationally I think not.

[D-20] * * *

Q You testified that one of the ingredients or components of quality education and you, in detailing that at several different levels of development, said that the development of academic skills was not any more important than any other objective of quality education as you defined it. Isn't it true Dr. Carmichael, that these other elements that you spoke about in terms of developing attitudes and in particular a self-perception of the student, his feeling of self-worth and the teachers' perception, don't these things cross over and intermingle with academic development as well? A Yes. And I was aware of that in commenting on it. I could very well take the position that you really can't develop one as effectively as you should without developing the other in an appropriate [D-21] manner. There [*sic*] are so interdependent that—well, a specific example of what I have been trying to say is that it is not possible to develop to a high degree academic achievement if you have not dealt adequately with the individual attitude part of the

youngster in terms of his development, his fulfillment, and so forth. It isn't possible to teach an unhappy child effectively.

Q You used the phrase, a false perception that the white child, I think—was your reference that he has a false perception of his worth based on skin color if he is in a segregated system of schools? This is also true of the black child—one's perception may be higher or lower, but both get these false perceptions of what they can and cannot do? A Right.

Q Do you feel, Doctor, that in a school community with the physical dimensions of Chesterfield, Henrico, and Richmond, that children in schools of 65, 70 percent black, where there are other schools in the school community that are 90 percent to 100 percent white, do you think that they have these false perceptions, both white children and black children? A I think they do.

Q Would you say that those schools in terms [D-22] of these perceptions are segregated schools? A Yes.

Q In terms of the child?

Does he pay a great deal of attention, is he greatly helped by arbitrary lines drawn through an essentially urban area that says on the other side of this is Henrico County and on this side is Richmond, in terms of his perception of the schools? A You have to break that down, I think, by levels of the development of the child. I think Dr. Pettigrew was pretty strong in applying that, you know, in the early years the child is merely reacting with his environment. He is not reflecting on it to this degree. What really is happening is that the very strong influence of the parent at a very early age begins counseling him, you

know, as to what you should and should not do. The parent carries attitudes which are so much a part of the child that there is no way, really, to unravel it. It starts being reflected as the child moves up through the schools and into teenage. And I think we say it is reflected very strongly in these days on the part of our youth.

Q And you made a statement which I found interesting. You were talking about the effects of [D-23] education. I think you used the term "branches" in a state like Virginia where segregation was mandated by State law, school districts didn't have the option, it was in the State Constitution that the schools must be separate. In terms of that concept, in looking at the Richmond school community, can you say that under Plan III that the Richmond schools would be desegregating, looking at the entire school community? A No. Under Plan III with the high percentage of black students in each of the schools under new concepts of what constitutes the requirements they would not be.

Q Now, you say that not because of the high percentages in those schools, but because of the high percentage of those schools compared to the disproportionate percentages in the other schools, is that correct? A Well, both.

Q All right. A The first, by the high percentage, as long as it is really referred to as a black school or a Negro school in the minds of the people, this means that it is segregated.

Now, we all know if you get down and [D-24] count that we have got five here and a hundred or whatever, then by the old system we can say we have got desegregation. I began under this, you know, a school indeed is desegregated when we have got one of the other race in this school. You know, that is the definition. The definition in terms of

people's thoughts. If you don't believe that is true, you know, you just go out with a realtor, or you talk with teachers. I am trying to reflect, you know, what is my concept of what this school is. An awful lot of this testimony has been based upon that. That is where you trace it back to the percentages that Dr. Pettigrew is talking about.

Then there is the second consideration also that—but it really emphasizes this first—that if, yes, the complexion of the school here is 75 percent black, and even five miles away, or when we play a football game, the other side of the field is all white, there is no question as to what the feelings are in these situations.

[29-D] * * *

Cross Examination

By Mr. Gravatt:

Q Dr. Carmichael, have you had any investigation or study of the schools in Chesterfield or Henrico County? A I have made the study of the records as obtained and exhibited by the Richmond Board of Education in terms of the enrollment data, general location of schools, amount or number of black and white teachers per school and so forth. Not a direct survey in terms of official study of a given school system.

Q Have you made any effort to find out how much the schools of Chesterfield County are a part of the community life of the County, how much they are an integral part of the activities of the community, how many meetings and how many different activities of the community and the involvement of parents and [D-30] teachers and children, all parents and teachers and/or children are involved?

Have you made any effort to find out about that in either of these counties? A My answer is no.

Q So you do not know whether any schools in either of these counties are integrated and have the interaction that you referred to with the communities, do you? A I do not.

Q So that you are not able to say that the community concept of the school, in either of these counties, has not been successful from that point of view? A I did not attempt to say that.

Q Will you tell me, please, sir, what there is about a school that is 65 percent black that would give a black man or a black child a sense of inferiority? A Sir, there is the feeling taken to that school by 65 percent of its school population, which has been built up over 350 years, that I do not have certain rights because of my color and I will not be permitted to achieve certain kinds of things because of my color. And there is brought to that deficits in [D-31] many areas of life as a result of that. That is precisely what I meant and that is precisely what the feeling is.

Q What you say may be true, but what relationship does that 65 percent black in a school have to do with it? It is the majority. A That is the point that when that is the majority that that is the nature of that school.

Q Well, does this sense find its origin in statistics or does its origin something outside of statistics? A It finds its origin in the motions of people.

Q Have you made any effort or do you know of any survey that has been made that would reflect what you are now saying, that in a school 65 percent black that this casts

a blanket of restraint and a sense of inferiority upon the black people in it? A I cannot cite a specific research dealing with precisely the kind of thing I am saying outside of those cited by Dr. Pettigrew, which were filled with this sort of thing.

I cite my own experience and knowledge of the feelings and reaction of black and white children.

[D-32] Q Of which you said you got from talking to real estate men or somebody? A No, I did not say that.

Q Well, you referred to talking to real estate men and people around some place? A I did.

Q Where did you get it if you didn't get it from that? A I got it from sitting and talking with groups of black and white children, hundreds of those children, and sensing why and how they think as they do. That is a part of the educational knowledge of children.

[D-37] * * *

Q I am going to get to that.

Now I ask you the other questions. Have you seen these print-outs of the plan that is proposed by the City of Richmond? A Yes.

Q Where each school in the whole system is taken and a column is put up, bus out white, bus out black, bus in white, bus in black. Have you seen those? A Yes.

Q And they say here that it will require 78,000 people in a system of 104,000 to be put on a bus and taken away from their home communities and carried into new jurisdictions and put in a school because they are either white or black.

The Court: Just a moment.

Mr. Little: Is this a question or is this argument?

Mr. Gravatt: It is going to be a question.

[D-38] By Mr. Gravatt:

Q Have you seen these print-outs where this is required? A I think I have answered that twice already. Yes, I have seen them.

[D-39] * * *

Q The point—I accept what you say. The point I make is that now they are being transported to be gotten to school to get an education? A Right.

Q When you have done this, they will be transported to be put in school for the purpose of reaching a certain racial balance. A I would have said for the purpose of getting an education.

Q Say it that way.

But every morning they get up at 6:00 o'clock, they get on a bus because they are white or black, and they ride to a certain school and get in [D-40] it because they are white or black, and to stay there until time to go home, and then they get on the same bus and go back as white and black? A Yes, sir.

* * *

By Mr. Gravatt:

Q I think it is just as important as [D-41] it can be. I think in the light of this gentleman's own concept, how can you remove race consciousness and take these children and put them on the bus because of their race and carry

them to a place to put them there because of their race and then take them out of school when it is over and put them back in a bus with people of their own race and carry them back where they came from and not keep them race conscious? How can you do that? A I am of the opinion that the type of transportation used would not be that easily defined in terms of being for this race or that race. You are dealing with something here that is large enough and that is awfully important to examine. You are dealing with it on such a scale that you lose within that total transportation the fact that it is black or white. I could point out that that is considerably different from that imposed through Plan III at the present time, you see. That would be my response to your question, and the only one that I could give.

Q Well, do you think that you can attain to that ideal? A That I can what?

Q That you can attain, achieve the ideal [D-42] that you have set forth the school people to eliminate race consciousness under such conditions? A I have answered that it is the most feasible plan that I know to deal with the problems that these school people face.

* * *

[D-47] Cross Examination

By Mr. McIlwaine:

Q Dr. Carmichael, you said in answer to a question by Mr. Gravatt that you had made no independent examination of the Chesterfield County school system to determine the particular aspects of the operation of the school and its programs, if I understood you correctly. That was in his initial question, is that correct, sir? A That is correct.

Q Well, that would also be true of the County of Henrico? A That is correct.

Q Then you could not give us any value judgment based upon your own interpretations, shall we say, of the testing program which operated in Henrico County based on your own knowledge? A No.

Q Or whether or not they have or have not satisfactory educational facilities? A No.

Q Or their building programs or computer services or all of these other services that you say should inure to a proper educational division? [D-48] A Still answering your question that I have made no survey of how adequate, the answer would be no.

Q Now, carrying that one step further. Have you made any investigation of the bus time runs that would be required? A I examined the print-outs as presented on bus times and I know the procedure used in getting them, the same kind of thing that I think has been presented rather thoroughly here.

Q So that your response to the question based on the bussing times was based upon the estimates made by the City of Richmond, not your independent evaluation of the bus runs? A Based upon the presentation by the City of Richmond.

Q In answer to a question yesterday concerning the size of the metropolitan system in relation to the size of the metropolitan district across the country, I believe you said that there were a number of school divisions, other school systems in the country, that would be larger than the proposed consolidated district here? A Right.

Q Do you know how many school districts or [D-49] school divisions there are in the country, Doctor? A Districts?

Q Yes, or divisions. We call them divisions. A Divisions. I am sorry. That's right. You do. 26,000 is the number that I know.

Q And how many of those would be larger than the proposed metropolitan division? A I do not know the exact number. I have read numbers in excess of 100,000 in that kind of thing. As a matter of fact, I have a listing of those that are considered in the size and above of the one being discussed here.

Q Well, approximately how many would there be, Doctor? Can you give us some idea of the range? A It will be less than 50.

Q Less than 50? A In my opinion.

Q So of 26,000 school divisions in the country, there would be less than 50 that would be larger than the size of the proposed district here, as you recall the number of divisions? A If I am correct.

Q Now, coming for a moment to the proposition [D-50] placed by Mr. Gravatt that a child in the City of Richmond who is in a school situation in which the ratio is 65 percent black and 35 percent white. I believe you said that that ratio would give the child a sense of inferiority in that situation because the school would be identifiable as a black school, is that correct? A That is one of the feelings that I think you will have.

Q Now, suppose you reverse the ratio, Doctor. Suppose it is a 65 percent white and 35 percent Negro. Then what feeling does the Negro child have? A I don't know—

I don't want to get down to the feeling of a child. I want to deal with the feeling of the school.

Q I am talking about children now, Doctor. I don't want you to pick out any one child, but what is the feeling of a Negro child. You testified about his perception. A One, his feeling will not be that he is in a Negro school. When his feeling is that he is not in a Negro school, then he will not be thinking that he is in a school which is inferior because of it being a Negro school. That is the best I can come to [D-51] the kind of answer that I think you are seeking.

Q So that in your opinion the Negro child is educationally in a better position if he is in a situation in which he is not in the majority in the particular school by race? A I think it is better if he is not.

Q All right.

Now, Doctor, let us look for a moment at the proposed Metropolitan Plan, and reverting to your memory of the print-outs and so forth, the plan envisions bussing certain children out of certain schools and to other schools. And it envisions bussing certain white children out of certain predominantly white schools and into central city schools, and Negroes out of schools in the City of Richmond and into the County schools. Is that correct? A Yes, sir.

Q All right.

Now, let us take a school in which you have two busloads of children under the Metropolitan Plan. The columns on that plan indicate that there will be black children bussed out or white children bussed out, do they not? A Or both.

[D-52] Q I mean there will be either black children bussed out of the school or white children? A Yes.

Q I mean if a child is in a school that is 90 percent black and ten percent white they don't propose to bus whites out? A Not the whites, but propose to bus the blacks out, right?

[D-53] * * *

Q Let us take a situation, Doctor, in which the child is, they are bussing black children to a white school and white children to black schools, and in this particular instance from a black neighborhood. A Black only.

Q Pick up the children and bus them to a white school. Let us assume that situation.

Then in that particular situation, a child will be on a segregated bus ride to a white school. [D-54] A In your case, yes.

Q In my case? A Yes.

Q All right.

Now, would you give me your evaluation of what this would do to the child's—let me rephrase the question this way. Would a Negro child on a segregated bus ride become aware of the fact that there are only Negroes on the bus? A I would like to answer it in two ways.

Q Would he become aware of it?

I mean, if day after day after day after day he is placed on a bus with only Negroes on the bus, would it come to his attention? A I think certainly he would become aware of it.

Q All right. That was the question. A May I add a supplement to it? It has another meaning.

He also becomes aware that he is permitted to go somewhere and be with white children.

Q We are going to get him there eventually, Doctor.

Let's leave him on the bus for the [D-55] moment. He would become aware of the fact that he is on a segregated bus ride day after day. Now, would this have any effect on his self-perception? A Yes, I think he would be aware that he is black.

Q All right.

Is it beneficial or deleterious, in your opinion, for him to be aware that he is black? A It is all right for him to be aware that he is black. Surely.

Q But it is not all right for him to be aware that he is being bussed from a segregated bus day after day? A It is all right. It is all right.

Q But it is not all right for him to be aware when he gets to a school that it is racially identifiable as black? That has been your testimony. A No. The point is this. You are weighing what is at the end of the bus ride for him. What are his six hours of school experience in terms of the educational process?

Q All right.

What is at the end of the bus ride for him under this plan, Doctor? [D-56] A The intention that there be at the end of it a school environment which does not continue the inferior-superior kind of attitude on the part of the children.

Q Under this plan, what is at the end of the bus ride for him as far as the racial composition of the school is concerned? A According to the proposal, somewhere between 20 to 40 percent black.

Q So at the end of this bus ride, which may very well be 100 percent segregated, he arrives at a school in which

he is in the 20 to 40 percent minority under this plan? A Yes.

Q He is? A Yes.

Q All right.

Now, can you evaluate what effect that would have on the Negro child to know that at the end of a 100 percent segregated bus ride day after day and year after year, he always arrives in a school in which he is in the 20 to 40 percent minority? A Education doesn't stop with his getting there knowing that he is in the 20 to 40 percent [D-57] minority. It is what happens to him or can be prepared for him in that situation. He always goes to the restaurant, probably, in a segregated car. But the point is, how does he feel when he eats in that restaurant. That is the same kind of thing we are dealing with in the school.

Q Doctor, you have testified that the Negro child in Richmond going to a school that is 65 percent black and 35 percent white would be even sufficiently aware to look across the boundaries or somewhere and be aware that in Henrico and Chesterfield County the racial proportions are different and that therefore he is in a segregated school? A Right.

Q Now, would not a child with that much perception to look across a city line and be aware of the fact that those schools are that way, even though he doesn't go to them, wouldn't he have some awareness at the end of this bus ride that he always arrives at a school in which his race is in the minority? A I think he will perceive this, surely.

Q Do you say that it would be a beneficial or deleterious effect on his perception of himself now to know that he always arrives at a school in which he [D-58] is kept in the

minority? A Compared with the alternatives, the answer is yes.

Q What would be the effect on his perception, of the child? That is what I want to know. A I told you.

Q Would it be beneficial or deleterious, just per se? A It can't be per se. There is no way to make it per se.

Q Why not? A Because you can't remove the alternatives. There is no way to have just that world and forget there was ever another one or could be another one.

Q Well, for his education, these are features under this plan which will necessarily result so far as his educational experience is concerned, is it not, Doctor? A In that—

Q This will happen under this plan? A That is under that plan. The point I make, which I think is not an appropriate answer, is that there is no way to make the judgment on that [D-59] without saying compared with what.

Q You can if you turn the ratio around. You didn't have any difficulty with the judgment, Doctor, when it was put 65 percent black to 35 percent white. You had no difficulty at all saying he is going to be aware of, and that it is going— A Right, sir.

Q —going to have a deleterious effect. A Right.

Q Turn the ratio around day after day and year after year for the entire life of a child. He always arrives at a school in which his race is in the minority. Now, you can't make the judgment, or you don't want to make the judgment? A I can make the judgment.

Q Well? A You are dealing with this kind of thing. You are attempting to deal with a remedy at this point.

You and I well know that if this condition had not existed, if our situation had not been created at this point, and hopefully 50 years down the road it won't make any difference in any possible way, but we know is the ultimate remedy to it, when we are not sensitive to the color of another person's skin. We are merely [D-60] trying to deal with the remedy to a situation or problem as we presently find it.

Q Well, I don't understand that that is an answer to my question, Doctor, since I am asking you about what the perception would be. You want to talk to educational remedies, and I just want to talk about what the effect would be on a particular child.

But in any event, as you understand the plan, and as I understand it, that as you understand the plan, the ratios which are established under it would be stabilized, that the percentages of Negroes would be maintained between 20 and 40 percent. And you were here during Dr. Little's testimony, were you? A Yes.

Q He said that if an urban development or a highway or throughway changed the character of a neighborhood, then adjustments would be made in the plan to keep the ratio at 20 to 40 percent? A Adjustments are not made in the plan. Adjustments are made in the method of assigning pupils to a given area within the plan.

Q In effect, I believe they would do it by computer and by lottery? A Right.

[D-61] Q So that under this plan from the time a Negro child is born until he finishes his educational career, indeed forever, he will always be computerized into a minority racial educational experience. Is that correct? A I have one reservation. You made it appear as if it is a 50-year kind of operation and the real point, I think, is that

to begin and operate such a system in the immediate future, then that is correct.

Q Well, indefinitely, shall we put it, indefinitely under the plan, the child, the Negro child will always be? A First for either five or six years, depending upon what you put into the school, and then possibly for three years, depending upon what you put in the school, and then four years.

Q This is not what is envisioned under this plan? A Yes, it is.

Q This plan envisions, does it not, maintaining these ratios? A It envisions maintaining those ratios, yes, sir.

Q All right.

[D-62] Now, you said, Doctor that a 65 black ratio to white identifies a school and the child feels that he is in a racially identifiable school and this has a deleterious effect upon his learning experience.

Now, you say that if you change the ratio that that is not the case, that if it is a 65 percent white school and 35 percent black, he does not have this feeling. A I said that the school was not considered a black school and he does not have the feeling that he is in a black school which is an inferior school.

Q Yes, and having that feeling of going to a black school which is inferior, that is a deleterious or beneficial thing for him? A Deleterious.

Q All right.

Then does it not follow that in order to achieve quality education or an equal educational opportunity, the Negro child must be arithmetically suppressed into a minority

situation? A No. We are not talking about suppression. We are talking about—

Q Or maintained, then? A Well, I am not arguing with "maintained" or "suppressed."

[D-63] The Court: Yes, Mr. Little.

Mr. Little: I know counsel doesn't intend, but I think he is cutting off some of the answer.

The Court: I don't think he intends to do that.

By Mr. McIlwaine:

Q I want to rephrase it for the Doctor if he didn't like the word.

The Witness: I was not objecting to the word "suppressed." Would you please state the question again now?

Mr. McIlwaine: You said, Doctor—well, could we have the reporter read it back?

The Court: Yes.

(The reporter read as follows: "Then does it not follow that in order to achieve quality education or an equal educational opportunity the Negro child must be arithmetically suppressed into a minority situation?")

The Court: Does it follow?

The Witness: The question is too long to deal with.

The Court: I am sorry. I didn't hear [D-64] the answer.

The Witness: The question is too long to deal with in terms of starting with a point and coming to the other.

Do you mind stating the point of your question again, more briefly if you can?

By Mr. McIlwaine:

Q All right, Doctor. In three steps: You testified that a child in a Negro—a Negro child goes to a school with 65 percent black, 35 percent white, he would have the feeling that the school is racially identifiable, that is racially identifiable as Negro, and therefore that he is inferior? A Right.

Q You testified, I believe, that if you reverse the ratio, were to say a 65 percent white and 35 percent Negro, then the Negro child goes to that school and he does not get the feeling that the school is racially identifiable as Negro and he does not get that feeling of inferiority. That is what you testified.

Now, my question is, if that is true, then does it not follow that the ratio must always be maintained so that the Negro is in the majority situation?

[D-65] The Court: Majority?

The Witness: Minority.

By Mr. McIlwaine:

Q Minority, in the minority situation? A To deal with the present perceptions of what a school is and what is inferior and superior, that is true.

Q And this plan undertakes to see that that minority situation will be maintained? A For purposes of dealing with the existing problems, yes.

* * *

District Court Proceedings of August 19, 1971

Cross Examination

By Mr. Gray:

[D-67] * * *

Q Now, Doctor, you said that you see these systems that now exist, two as white and one as black? [D-68] A Yes.

Q So that you have not reached that stage that you desire, everyone—that you can look and not see the race? A No, sir, I haven't.

Q Do you see either one of them, any one of them as being intended solely for members of the black race or members of the white race? A Intended?

Q Do you see any of the school systems being school systems which are intended solely for members of the black or members of the white race? A That implies that someone stood off and said we are going to plan these school systems to be for the black or white. If that is the case, my answer is no.

Q Do you think that anyone in the community could look at the school systems and say, anyone in Richmond, that the schools in this City of Richmond are intended only for black children or only for white children? A Using the word "intended" as I think you are using it, no.

[D-70] * * *

Q Thank you, Doctor. Thank you, sir.

Now, are there any white schools in [D-71] Richmond, public schools? A And by the definition generally we have been discussing here—

Q Well, by any definition? A By this year's operation?

Q Excuse me. Excuse me.

Well, will there be under Plan III?

A Under Plan III out of all the elementary schools there would be one that would fall within this 20-40, as I recall. There would be one that would be about 50-50, and all the others would be definitely over into the all-black category of all the elementary schools in the City of Richmond.

Q Well, now, Doctor, let me get our terms straight. If it is more than 50 percent, you say it is all-black? A No, I didn't say more than 50.

Q I thought you did. A I said there would be one of them, as I recall, 16 or 18 fall in the opposite to the 20 to 40.

Q They would be—that is down to the 20 to 40 level of white only. A One falls within this limit that we have discussed and the other one is in between those [D-72] two positions in the latest projections of enrollments of Plan III for the school year '71-'72.

Q Well, when you characterize the schools as a black school, then that is the school that has more than 40 percent black? A No. It is a school which is reaching that point of saying 65 percent, and has been described here previously by all past patterns and trends of these kinds of schools will hasten on to a much higher percentage of black.

Q Let's just stick with me for this year. We will talk about what happens to it next year a little later on.

Then under the plan with the percentages that are shown, are there any black schools and white schools in Richmond under Plan III? A Plan III, my definition or yours?

Q Yours. A My definition. By the definition that I have supported and has been used in this Court, out of 18 elementary schools, 16 would be black and one would be in an in-between based upon a good higher percent of white, and one would be white.

Q One would be white? What percentage of [D-73] white does that have? A That percentage of white for that particular school has 66 percent white and 34 percent black.

Q So that is a white school? A That—

Q So then I take it that under your concepts the City of Richmond is still operating a dual school system and some schools are black and some schools are for white? A Under my concept. That is not a legal thing on my part at all.

Q It shouldn't be illegal in the courtroom, Doctor. A That is okay.

Q Now, you have indicated to the Court that school districts are adjusting boundaries all the time. You were talking about different parts of the country use different terminology, but what you are really talking about is the attendance zones of schools? A School zones. We are talking about school areas here, area zones.

Q Well, we are talking about political [D-74] subdivisions? A In one sense we are. In the adjustment we are talking about what I believe has been used as school area attendance areas. I call them school zones.

Q Well, in these districts that are changed all the time, these attendance areas that you were talking about being changed all the time, they come under the same administrative unit, do they not? A Right.

Q So that it is quite a different thing to talk about changing the boundary lines, which is done all the time in Chesterfield County and in Richmond and Henrico, adjust for the school populations and movement of people, that is one thing, but changing a part of the unit to another administrative division, is another thing, isn't that right? A We are not talking here about changing from one administrative unit to another.

Q Oh, we are not? A No. We are talking about the total system being under one administrative unit.

Q Well, we are trying now, Doctor, if I may inform you, maybe you don't understand, we are [D-75] at least trying to operate it under three divisions today. So I take it that the administration of schools in Chesterfield, you should know, is under— A I know that.

Q Well, then, wouldn't that be changing? A At one instance you are talking between school districts and another instance we are talking about zones or attendance areas. Which one shall we talk about?

Q I am merely trying to ask you, sir, is there not great distinction between merely changing an attendance zone and changing part of the area into a new administrative head. A Right.

Q All right, sir.

Now, I believe you said that there are practical problems about every major change in education, right? A Right.

Q And there is a practical problem with the major change in education brought about by the requirement that children be assigned to schools without regard to their race? A Right.

[D-76] Q Now, are you suggesting that the practical problems in a particular political subdivision brought about by this requirement are so great that we must say it cannot be accomplished in this political subdivision? A We are talking about different kinds of practical problems. I was responding about the implementing a solution to a requirement or problem. Now, that is the kind of practical problem I was talking about. If you want to come at it from another direction, I will be happy to try to answer it, but my position was relative to the problems that would occur if certain actions were taken.

Q Well, Doctor, I was interested in an article in this morning's Times Dispatch. A very touching article, I thought. It appears that in a workshop on the integrating of the desegregated schools, the students had their day of talking about some of, I guess I can characterize them as practical problems. The teachers or the students indicated that in the effort to bring the blacks and whites together, some of the teachers apparently just didn't care. Have you run into that as a practical problem in your experience in the desegregation of schools? [D-77] A Yes, sir.

Q If that situation were corrected, would, as the students suggest, the hope of making it work here in Richmond be better? A It would be better everywhere.

Q Fine.

The students indicated that the teachers just talked to the blackboard and let the extracurricular activities which

might have brought about better race relations, just let them go. If they make an effort to bring the children together in extracurricular activities and make a serious effort, is the Plan III given a better opportunity of working? A It is given a better opportunity to work, yes.

Q Yes, sir.

And the students seemed to agree with, I believe it was—well, a previous witness—I don't want to say because I may be wrong, but I am almost certain it was Dr. Pettigrew who indicated that the tendency of the news media to blow up these incidents where black and white children bump heads on the school grounds, as children have done throughout the years, but if it happens between the races they [D-78] blow it up as a racial incident. And if that were calmed down, would that help to make it work? A Sir, I have dealt with ifs for about 17 years and we have got plenty of ifs and plenty of ifs, [*sic*] but I am not capable of overcoming many of these ifs.

Q In other words, the practical difficulties, Doctor, are too great and we throw up our hands and say we can't make this plan work. Isn't that what you are saying? A Yes, sir.

Q What you are telling this Court is that in America we can't make a system work if it is majority black? A Right.

Q Well, that being the case, Doctor, if I can be permitted an editorial comment, it is sort of a sad thing, but do you have any suggestion for the counties surrounding Richmond which, on Exhibit 52, are all shown to be majority black counties?

Would you suggest to them, out of your experience, how they are going to make it work?

Mr. Lucas: Your Honor, I don't think they are involved in this litigation.

[D-79] The Court: Well, I think it is a test of the witness's expertise.

Do you have any suggestions for those counties in that situation, Dr. Carmichael?

The Witness: I think it best I answer no.

[D-87] * * *

Q Thank you, sir.

Now, Doctor, you have talked about the consciousness of the child, consciousness of his being in a majority black school, and the fact that this is a plan to try to overcome that sort of consciousness.

What is the most important, which is the more important in the education of a child, the home environment or the school environment? A I generally conclude that the home environment for the general person is.

Q All right. [D-88] A Is most important.

Q I believe most educators agree with you on that.

The thing that is troubling me, Doctor, and I would like you to comment on, when this child lives in one of the black neighborhoods and is required to leave his neighborhood on a bus of black children to go over to a white school, and he comes back to his black neighborhood in the evening, what answer do his parents give him as to why he has to be taken out of the neighborhood to go to school? Do they tell him, Doctor, as you have told the Court, do they tell him, "Well, son, you see, you just can't have a majority black school"? A I doubt that they would.

Q Well, what would you suggest they tell him, Doctor? Now, we are talking about the impact on the child. What do you think they tell him? A I would suggest that they tell him that the restrictions have been removed, that you don't have to continue living all the minutes of your day in a black environment. But because I suggest it I am not trying to imply that that is what they will tell him. I know parents and children and home life, I think, [D-89] better than that.

Q But if little Johnny happens to be a little more perceptive than some children, maybe, and he says, "But Mommy, I wasn't in an all-black environment. I was in a school that had 40 percent white children and 60 percent black children. We worked it out in math class one day. Why do I have to leave a school that is 40 percent white? Why can't we have some majority black schools, Mother?" A Well, again, I would suggest that I think the ideal parent ought to tell such a child—but I do not want to imply that is what the parent will tell the child—

Q Do you think, Doctor, it would have impact on the child, the black child, to be told, "Son, in America we can't have majority black schools"?

The Court: Just wait for the answer, will you, Mr. Gray?

Mr. Gray: Yes, sir.

The Court: Ask it again, please.

By Mr. Gray:

Q I asked whether or not—it may generate more questions now.

The Court: That is all right.

[D-90] By Mr. Gray:

Q I asked whether or not you feel it will have any impact on the child to be told that in this country we cannot have any majority black schools? A It could have impact upon him to be told that you could or you couldn't.

Q Do you think it might have an impact on him to tell him that you can't even have them that are 50-50? A I think anything told a child can have an impact.

Q Do you think it would have an adverse impact on him, Doctor? A I don't know whether it would have an adverse impact one way or the other.

Q But it would have an adverse impact on him to go to a school that is 60 percent black? A Today when a black school is considered inferior.

[D-91] * * *

Recross Examination

By Mr. Lucas:

Q Dr. Carmichael, let's take Mr. Gray's question out of the realm of theory and put it into Richmond. If he is told that no school in Richmond, in the Richmond school community, Richmond, Henrico and Chesterfield, can be identifiable as tailored for white and black, but that it must be substantially the same as the population in that school community, and if that, in fact, is what the child is told, do you think that would have an adverse effect on the child? A No, I do not think that would have an adverse effect or him.

[D-92] * * *

Q Is it not equally arbitrary or arithmetical suppression in terms of education, not talking about politics, to say that

in one urban community that you will have black schools, identifiable black schools on this side of a line and identifiable white schools on the other side of a line? A That is suppression as far as I am concerned.

[D-93] * * *

Redirect Examination

By Mr. Little:

Q Doctor, when you were in the category of the 65 percent black school, were you thinking in light of the Richmond community, Richmond, Henrico and Chesterfield, those ratios? A Yes, I was.

Q Under the hypothetical posed to you as to the sad plight of the black child who is told that he can't do this and he can't do that, you mentioned something about alternatives. Looking at Richmond alone, absent implementation of this plan, what is the alternative for the black child in the city? In other words, if there is no merger, what is the alternative for the black child? A As far as I am concerned, his only alternative is to go to a black school.

[D-94] * * *

LUCIAN D. ADAMS

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. O'Brion:

Q State your full name for the Court, please. A Lucian D. Adams.

Q What position do you have with the Richmond public schools? A Superintendent of schools.

Q How long have you held that position? A A little over two years.

Q How long have you been with the Richmond [D-95] public schools altogether? A 21 years.

Q Are you familiar generally with the Metropolitan School Plan as outlined by the documents earlier this week? A In a general way, yes.

Q I take it you were not in on the development of that plan? A No.

Q Has the Richmond School Board indicated its position on this plan? A Yes.

Q Was this position unanimous in support of the plan? A Yes, it was approved by the full Board.

Q In your experience with public education in the Richmond area, would you please describe what efforts have been made by these three localities I am talking about, Henrico, Chesterfield, and Richmond, together to solve common educational problems? A There have been a number of cooperative ventures in the City. I think the first one that I recall had to do with the establishment of what is known as a cooperative training center which is a [D-96] school for mentally retarded trainable children, which was back in the early '50's, which was established by the three divisions. It is still in operation and still serves a very useful purpose in providing education for a number of children who do not exist in large numbers. And I think we can do it more effectively working together as three divisions.

Q How was this cooperative training center funded and how is it funded now? A It is funded on a per pupil basis.

Q Is it still in operation in one building or are there two buildings involved? A There are actually two buildings now. The school was started originally in the old Bliley School, which is down off of Fourth Street, after being in two or three locations in the City. It moved year before last, I believe, to the Virginia Randolph School in Henrico County. Then last year we established a branch of that in the Hickory Hill School on the south side of the river so that we would have schools operating in both in the north and south of the river for these young people.

Q What sort of participation was in that school by the three localities last year?

[D-97] The Court: Would you like a table, Mr. Adams?

The Witness: Then Henrico had 79 and Chesterfield 25. I think we had something probably a little over a hundred students in the schools.

By Mr. O'Brion:

Q How are the pupils transported to the cooperative training? A They are transported by the school divisions in school busses.

Q No matter where they live in the school division? A There are some pupils, I believe, who are transported by their parents, but by and large they come by school bus.

Q What about the mathematics science center, Mr. Adams? A The mathematics science center was established under a Title III grant from the federal government. It covers three school divisions in this area and has provided

a service that could not be provided in any one individual school for pupils who are talented in these areas. That program ran for three years under a grant from the federal government.

[D-98] It proved to be so valuable that the five school divisions are now financing it jointly.

Q In addition to the three localities we are talking about, what other two school divisions? A Goochland and Powhatan, I believe, are involved in it.

Q Where was it initially located, that program? A This program was initially located in the John Marshall High School building, and it, too, has moved to the Virginia Randolph, being in Henrico County. I think you might be interested to know that the mathematic center is under a board which consists of the Superintendent and one School Board member from each of the five divisions, and a chairman of that board is regularly elected from the group and serves as the policy-making and head of the organization.

Q What type programs are offered in that? A Well, there are any number of programs for talented children in science as well as others. They have Saturday morning programs. There are model lessons that go from school to school. There are classes on the campus out there that attract children.

They have a rather extensive summer [D-99] program. Then they have a general program which gives or brings outstanding lecturers and others into the community.

Q What sort of participation again, by these three localities, was in the mathematics science center last year? A During 1970-'71, Chesterfield has participation of 8,872; Henrico, 10,469; and Richmond, 11,399.

Q Here again are most of the children transported by school bus to this facility? A Yes.

Q Is this the same math science center that was described last August in a hearing in this Court in a paper entitled Unity Out of Diversity? A Yes.

Q School Board Exhibit 35.

What other joint ventures or programs have been undertaken by these three? A The other large venture, that is, that has considerable participation by the three school divisions, would be the technical center which offers some 22 different programs in technical education, and provides for some seven to 800 pupils during the [D-100] school year.

These pupils come to the center on a half day basis. They take their academic work in the locality and then come into the technical center for the other half day.

The participation during last year were 152 pupils from Henrico, and 80 from Chesterfield, I believe.

Q When was this created, the technical center? A This opened in 1968.

Q In your opinion, Mr. Adams, how have these joint programs worked between these localities? A I believe they have entirely satisfactory and provided opportunities for young people that none of us could have done as well on our own.

[D-102] * * *

Cross Examination

By Mr. Gravatt:

Q Dr. Adams, you did not give us the number of Richmond students in the technical center. A I don't believe

I have the number. There were a total of 727 with 152 from Henrico and 80 from Chesterfield. We had a few other pupils from other counties such as Hanover and New Kent. I believe that approximately half of that 727 are Richmond pupils.

Q These are programs that you have mentioned, specialized programs? A Yes, sir.

Q And this is not anything unusual. You have to have a certain number of people who are interested in participating in these programs in order to justify their establishment? A Yes, sir.

Q And this is something that happens frequently where one or more school divisions do not have sufficient number of pupils to effectively conduct these programs? [D-103] A Yes. My testimony indicated this goes back to the early '50's.

Mr. Gravatt: That is all.

The Court: Mr. McIlwaine?

Cross Examination

By Mr. McIlwaine:

Q Dr. Adams, just to clarify a point on the numbers in the math science school. They came or might appear at first to be relatively large. Did I understand that the programs there are not annual programs? A No.

Q You do not transport— A They are short programs, and there could be the same child who could repeat in this count. The total of 35 or 36,000 involved is 35,497 total participation, but the same child might have participated more than once.

Q And he would not be there for a semester or a year? A No. They would not last that long, although the same child, if he is concerned about a very specialized subject that wasn't available in his school, could go throughout the year. He would not go [D-104] there on a full-time basis which, of course, is a part-time program in all respects.

[D-105] * * *

By Mr. Gray:

Q Mr. Adams, I believe you said that the School Board was unanimous in the adoption of the plan? A That is correct.

Q And the filing of the motion for joinder? A In the filing of a motion I believe there were some abstentions, if I remember correctly, of voting when it first came before the Board. There was a difference between the filing of the motion and the adoption of the plan.

Q There were some differencs of opinion about whther or not this consolidation motion should be granted? A If I remember correctly, two members of the School Board abstained from voting when it first came before the Board.

[D-106] Q I see.

And in reaching their unanimous opinion, was one of the reasons that was used was that it would minimize the amount of bussing of Richmond students that might otherwise be required? A I don't recall, Mr. Gray, whether that was suggested or not.

Mr. Gray: May I approach the witness, Your Honor?

The Court: Yes. Show counsel first what you are going to show the witness.

Mr. Gray: I think they probably have it, Your Honor.

Mr. Little: Tell me what it is.

Mr. Gray: A letter from the School Board from the Richmond Public Schools to the Honorable Thomas J. Bliley, Mayor, under date of November 16, 1969.

The Court: Do you want to show it to the witness?

By Mr. Gray:

Q Look at the last line in that paragraph? A Yes, it would very probably minimize them.

Q This is a letter which was written by the [D-107] School Board to the Mayor and recorded in the School Board minutes.

May I ask you if that appears a second time in the letter that that was the reason for the consolidation plan?

Mr Lucas: Said the reason or a reason?

The Court: Well, it is Mr. Gray's question. He said was the reason. Is that what you asked, Mr. Gray?

Mr. Gray: Yes, sir.

Mr. Lucas: I didn't understand the question.

The Witness: I believe that is in a little different context, if I might read it. "In a consolidated system, much of the cross-town transportation could be eliminated in view of the proximity of many of the county schools to the City limit."

By Mr. Gray:

Q Yes, sir.

Now, can you tell me, sir, in that letter, if anywhere in that letter the School Board in writing to the Mayor ad-

vised the Mayor that the reason for asking for this plan was so that we can have 60-40 ratio in all schools? [D-108] A I would have to read it all to know. I presume that you have examined it and if it is not there that—

The Court: Make a representation and we will save time, Mr. Gray.

I take it you wouldn't ask the question if it was there.

Is that right? I take it it is not in there.

Mr. Gray: Judge, I am always hesitant to try to say something isn't there.

The Court: You didn't see it?

Mr. Gray: I didn't see it.

I will make that representation. I didn't see it. I can say when something is in there, but when you say it is not there and they find it, that is terrible.

The Witness: I probably couldn't find it either.

By Mr. Gray:

Q You are familiar with the letter, aren't you? A It has been a long time, Mr. Gray, and a lot of things have happened since November.

[D-109] Q When it was written, though, you know you didn't write to the City Council and tell them what you are trying to do is get a 60-40 percent balance in the schools, you know that, don't you? A It is not in this letter.

Q Well, you didn't have any idea of putting it in the letter, did you? A Well, I didn't write the letter, Mr. Gray.

Q You didn't?

Well, do you know what the occasion for the letter being written was? A I can read it in the first paragraph.

Q Anyway, Doctor, I thought just that certainly as Superintendent, you would know what the reason was for that letter, but if you want to read it, that is all right. Anyway you want to answer it. A Would you like for me to read it?

Q Any way you want.

The Court: Give us the answer to what the reason was, Mr. Adams. Do it any way you wish, Mr. Gray says.

The Witness: "We have received your communication concerning the recommendation of the City Council that the Richmond School Board reconsider [D-110] its action and rescind at this time the motion to join the school boards of Chesterfield County and Henrico County in present litigation involving the Richmond School Board before the United States District Court."

By Mr. Gray:

Q So, in other words, the School Board had received a communication from the City Council asking them to reconsider this consolidation, and this was in reply to that? A Yes, sir.

Q And twice in the letter you refer to the transportation, or transportation of the students in Richmond, was referred to. And you do not know, pretty certain, that they did not refer to this racial mix question, right? A Right.

Q Now, if I could ask you one more time to look at the letter, I ask you in the second paragraph if you will read to the Court what you found to be the duty of the School Board of the City of Richmond with respect to the education—

The Court: I am sorry.

Mr. Gray: I am sorry, Judge.

[D-111] The Court: You were addressing the audience.

By Mr. Gray:

Q What did this letter say was the duty of the School Board with respect to providing education? A "Each member of the School Board fully understands that while it is charged with the primary duty of providing the best possible school system for the children of Richmond, it must remain responsible to the people who support such a system."

Q I see.

So, to the children of the City of Richmond.

Thank you, Doctor.

I have no further questions, Your Honor.

The Court: All right.

Mr. Byrne?

Cross Examination

By Mr. Byrne:

Q Now, Dr. Adams, these programs that you have testified about, they are purely voluntary aren't they? A Yes, sir.

[D-112] Q Any party can withdraw at any time they want to? A Yes, sir.

Q If I understood you correctly, Goochland and Powhatan also participate in the mathematics science center? A Yes, sir.

Q If I accepted your figures as being correct, then they

had about 4,757 pupils, who participated, is that correct? A Goochland had 1,513, and Powhatan had 1,428.

Q If my math is a little different—would you repeat that? A We had 466 from the parochial and private school.

Q That gets us up to 3,300 or 3,400, approximately. Somewhere along the line I lost 1,400. I understood you to say that there were 35,497 who participated totally? A 35,497 is the figure I have here.

Q I believe you testified that 8,872 of those came from Chesterfield? A Yes, sir.

[D-112a] Q 10,469 from Henrico? A Yes, sir.

Q 11,399? A From Richmond.

Q From Richmond? A Yes, sir.

Q Unless they taught me wrong in your system when I was young, that is 30,740 which would leave a difference of about 4,700 pupils? A I have not added those figures.

Q All right, sir.

What was Hanover and New Kent participation in the technical center? A I don't have those figures. I only have the total and the Chesterfield and Henrico on this document.

Q Well, did you say there were 727 total? A Yes, sir.

Q 80 from Chesterfield and 152 from Henrico? A Yes, sir.

Q Half of that 727 you estimated to come from Richmond? A Approximately that. I don't have the [D-113] exact figures.

* * *

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LOCHRAN C. NIXON, JR.

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

[D-115] * * *

Direct Examination

By Mr. Little:

Q Dr. Nixon, what is your present position, sir? A I am Director, Executive Director of the Midcontinent Educational Development Laboratory.

[D-116] Q I see, sir.

Doctor, relating yourself to this case, you have been present, I think, through all of it, most, if not all, have you not? A Yes, I have.

Q Would you give to the Court your definition of quality education in a biracial community? A Well, anytime you begin to define a term as nebulous as quality education, it often requires one to ask the further question, quality for what? I would approach it in that way by asking a broader question, that is, what is the purpose of education in a society?

Normally one would say that it is to achieve the overarching goals and to perpetrate the value systems of that society.

I would say that the educational system is perhaps the most important single mechanism available to a society in achieving its goals and advancing its social order.

Here, then, if we take it to one other level, we generally say we operate in two different domains, the cognitive domain, which has to do with knowledge, and schools, the effective domain which has [D-117] to do with attitudes and values.

For example, an educational system in a totalitarian society might have different goals and objectives than an educational system in a democratic society. Since we are in a democratic society, where worth and dignity is placed on the individual, where it presumes the maximum participation of that individual in the affairs of the society, it requires the effective functioning of that individual, of all individual members.

In this country we believe that this philosophy requires creating educational environments which permit each student the opportunity to develop his maximum potential.

Q So, then, it is really the creation of the environment within which these goals can be obtained, is it not? A Yes.

Q Doctor, are you generally familiar with Plan III which will be implemented in the Richmond schools beginning in a couple of weeks? A I have the exhibit dealing with Plan III that has been provided. I have looked at it.

Q Have you been made familiar with the [D-118] racial composition of the county, of the school, the school racial composition in the counties of Henrico and Chesterfield for the year 1970 and 1971 as well as a few years back? A Yes.

Q Now, in light of your definition, would you give your evaluation of what the effectiveness of the relief which the black plaintiffs in this suit will obtain under Plan III in Richmond for the coming year? A Well, I would be greatly disappointed in it from that point of view in that I don't believe meaningful integration and quality education can occur in the City of Richmond, in the counties of

Henrico and Chesterfield, under the plan that was operated that we are calling Plan III, and under the plan which the figures relate to in Henrico and Chesterfield county that I am looking at.

Q All right, sir.

Given the racial composition of the three political subdivisions, what alternative organizational pattern would occur to you as an educator? A Well, we have a situation where a system is rapidly becoming clearly identifiable as [D-119] black, that being the Richmond school district, surrounded by two systems that are clearly identifiable as white school systems.

It occurs to me that we have to approach the problem from a broader perspective, from a broader base than examining them just in terms of the three political subdivisions, which would lead me to a recommendation similar to the Metropolitan Plan that is being proposed and has been explained in testimony by Dr. Little.

Q All right, sir.

Coming to the size of the division, are you disturbed by the fact that it will initially constitute 104,000 students? A Well, size in and of itself will not provide quality education. Size must be related to the objectives upon which a school system is based. The size becomes important when related to the task that size can accomplish to meet the educational objectives that have been established for the school districts.

Taking that a step further, most research on size relates to minimum size required to do certain things. For example, we know there is a history of consolidation of schools in this country. The number [D-120] of school districts, the total number of school districts in this country has been

declining over the years, primarily because by bringing together smaller school districts it enables them to carry on educational programs beyond the scope maintained by the individual districts.

So you can find in the research certain criteria that relate to size. The minimum size required to do certain things. Normally, these criteria center around such things as scope of program as we were just talking about.

Other factors might be the range of educational services or the composition of a community or the provisions for administrative and instructional, the economic base. There are a number of factors.

There is very little to indicate that a school system reaches a maximum size. As I have indicated generally the research data deal with minimum sizes required to do certain things; however, I would suggest that most of the research and most of the studies that we have available to us have related to things that have been very important to us in the past. But I think we need to add to that list other factors which may now suggest either very close cooperation [D-121] among groups of school districts or the consolidation of numbers of school districts.

Here I am talking about utilization of modern technology in education, the systems approach to management, the planning program, budgeting evaluation system, and other highly technical and technological capabilities that we find education moving toward, but which smaller systems don't have the capacity to implement.

Q Yes, sir.

Doctor, let me ask you this. What does the term metropolitanism signify to you, if anything? A Well, it is a way of looking at a total community. It is really a name for a growing significance in American society of a way of treat-

ing an entire metropolitan area. Actually metropolitanism is a way of looking and thinking about cities and their suburbs. It is a way of relating problems of a metropolitan area to alternative solutions and looking for alternative solutions within the capabilities of that total metropolitan area as opposed to any political subdivision that might exist there.

Q Doctor, going back to quality education just a moment. In a biracial community, do you believe [D-122] that meaningful integration is an essential element of quality education, in a biracial community? A Yes, I do. I don't see how in a biracial community you can have meaningful integration or quality education without meaningful integration.

Q Drawing your attention to the plan that has been submitted, I would like you to compare from your standpoint as an educator the probable results and benefits to the plaintiffs in this suit with the implementation of this plan as opposed to the implementation of Plan III and the continued separate operation of Henrico and Richmond schools. A Well, as I examined this, I think there are three primary—

The Court: Excuse me. I think you meant Henrico and Chesterfield.

By Mr. Little:

Q Henrico and Chesterfield. Excuse me. A As I have examined this, I think there are probably three primary factors which I would want to enlist. One would be the viable racial mix which it would provide.

A second one, and a very important one, [D-123] would be to promote stability within the school districts in the metropolitan area. Third, I think it would provide an

environment for quality education for all students in the metropolitan region.

There are other factors which one could list that relate to the Metropolitan Plan, apart from these, that have to do with some of the things that I alluded to a few moments ago, and that is the advantages that size would afford in looking at educational technology and such areas as that.

Q You are satisfied then that there would be advantages beyond the obtaining of a viable racial mix or meaningful integration? A Yes, I would say so in that I am a strong opponent [*sic*] of education capitalizing on new technology that is available. I think we have more efficient ways of doing things than we have ever had before, and I would like to see education move forward to capitalize on this to the maximum degree possible.

[D-124] * * *

By Mr. Little:

Q Doctor, you have been furnished and I [D-125] assume you have studied the Plan III under Richmond so far as the composition of the schools in Richmond would be constituted under Plan III? A Yes, sir.

Q You have also studied the racial composition of the schools in Henrico and Chesterfield as they existed last year? A Yes.

Mr. Gray: Same objection, Your Honor. He has answered beyond the scope of racial mix as to the assets.

The Court: Well, I think the objection is overruled. I will let him put it in.

Go ahead.

The Witness: If I understand your question, you are asking me to comment on the advantages that would be afforded by the Metropolitan system along the lines which you have identified, and I would—

By Mr. Little:

Q Right, sir. A I would begin by saying that I think it holds out very exciting possibilities for school children in Richmond as well as the surrounding counties. Provides a sound base from which desired [D-126] educational goals can be achieved. It provides the prospects of gaining the factor of stability in the metropolitan Richmond area.

The alternatives given to some, the alternatives that I looked at, I would strongly support the Metropolitan Plan.

Q Do you think there is any likelihood of meaningful integration under Plan III in Richmond? A No, I don't think that there is a likelihood of any meaningful integration under Plan III in Richmond because I think that it is in the process of moving toward what will become—what would be identifiable as an all-black system.

Q And what do you foresee the identification of the school systems in Henrico and Chesterfield to be? A I think it is very likely that continued along the same way in which development is now occurring that they are likely to continue to be identifiable as all-white.

Q All right, sir.

Doctor, you have heard a lot of discussion about neighborhood schools and bussing. I would like you to give the Court your views on [D-127] neighborhood schools and the bussing problems. A Well, neighborhood schools and bussing, as those terms—to look at those terms as they are commonly used today, I think they have really come to be

synonomously used with perpetuation of the dual school system.

I would not see any particular advantage or disadvantage to bussing within itself. It is an educational tool, just as educators have available to them many tools for achieving their goals.

For example, as you look down over the history there was a point that we talked about earlier where it was highly advantageous to bring together outlying school districts into a consolidated school where the school would have the capability of providing an educational program that far exceeded that provided by the individual districts.

The school bus in this particular case served a very useful purpose in bringing children long distances into consolidated centers where their educational program would be of higher quality.

I think that, again, the concept of neighborhood school means to me something along the same lines that the previous witness defined. That is, [D-128] the community school concept which, of course, educators support. However, the concept of neighborhood schools, the concept of bussing, has to be applied to a particular situation and the degree to which it achieves the major educational goals.

Q All right, sir.

Are you concerned, as an educator, over the fact that the implementation of a Metropolitan Plan would, in effect, entail disregarding political subdivision lines? A From an educational point of view, political subdivision or political subdivision lines would have no relevancy.

Q All right. Thank you, Doctor.

The Court: Mr. Lucas?

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Cross Examination

By Mr. Lucas:

[D-129] * * *

Q Now, let's put aside the question of school consolidation and school merger, any of those questions. Let's talk about the Richmond school community. Let's talk about segregation and desegregation, separate and apart from any political organizations. Let me ask you a couple of questions:

You talked about education and race.

[D-130] You said that a biracial mix was an ingredient of quality education. You said that you had cognitive and affective functions and the affective functions dealt with attitudes and values.

Now, does the attitude and value portion of the affective definition that you gave, does that cross over with the cognitive? A Yes, they are highly interrelated and, as was suggested in testimony yesterday, the attitudes and values are quite interwoven with the academic school and achievement qualities.

Q Now, when you described Plan III, Henrico and Chesterfield County, you were asked by Mr. Little whether or not effective relief would be supplied to the plaintiffs in this case with the Plan III alone or could there be effective integration or desegregation in Richmond school community with the present or the proposed operation for the coming school year of Plan III in the operation of schools in Henrico and Chesterfield.

The Court: Just a moment.

Mr. Gray: If Your Honor please, is that not the issue which the Court will resolve? I object to the witness answering it.

[D-131] The Court: Well, no, I am going to let him answer it.

Go ahead, sir.

The Witness: Well, when I was given these plans to examine, I don't see how in this metropolitan area you can separate this issue out. Continuing along the way in which the Richmond school district is developing and which Plan III is likely to further promote, is a school district which would be highly identifiable as a black school district. Of course, which, along with the things that go along with that, which we have been talking about here, and that is the fact that we are dealing with a culture that has undergone many years of discrimination. And what we want to do is reverse that, not perpetuate that.

The fact that you would have in the counties what essentially would be identifiable as a white school system, it is going to be quite obvious to the pupils in the metropolitan area that in a sense you continue to have a dual school district.

Q All right.

You testified that with respect to the sizes of school districts that were recommended in the literature, you said these usually dealt with [D-132] minimum sizes to do certain things to achieve quality education. So that the consolidation of the rural areas, it was thought, for instance, that a consolidated high school could provide more course offerings than the smaller school in separate communities. Is that correct? A That is corect.

Q So that whether state mandated or voted in by the people, what have you, these schools were consolidated to provide quality education? A Precisely.

Q All right.

You testified that the Richmond school district, the Richmond school community, that the size didn't bother you.

Now, let's look at the Richmond school community in the contention of a State imposed constitutionally mandated pattern of segregation. What is the minimum size needed to eliminate this effect? I think you talked about the effects of segregation. A I wouldn't want to put that on the basis of a minimum size because that appears that you have to have a certain figure in order to bring that about.

I look at it in terms of what is [D-133] feasible in this situation.

Q Let's look at Richmond, Chesterfield, and Henrico. Mr. Little talked about what is feasible to do and what is good educationally, and what is necessary in turn to provide a minimum size to eliminate the effects of this State imposed segregation. A In my judgment it would be the merging of the three separate districts into the metropolitan school district with the further action that would be required to bring about the desired meaningful integration.

Q In other words, the size here is related to the objective? A Exactly. As I testified, I don't think size can be considered independent of the objects to be achieved.

Q In your work at the lab, Doctor, do you deal with urban school systems? A Yes, we do.

Q Are you familiar with the general pattern of disparity between the results on educational achievement tests between cities such as Richmond and bedroom communities such as Henrico County and Chesterfield? [D-134] A Yes, I am.

Q This is a fairly common pattern of disparity, is this correct? A That is true.

Q And there has been a lot of money spent in recent years in attempting to solve that disparity in achievement levels. I think the general title is compensatory education. Are you familiar with the field of compensatory education? A Yes, I am.

Q Has compensatory education, absent an integrated setting, been successful in reducing this disparity or eliminating it? A I think educators in general, Mr. Lucas, have been highly disappointed with the programs of compensatory education. They have had success to varying degrees. It depends upon what form compensatory education you are talking about. However, as a general rule, I would say that it is very clear to us today that compensatory education alone is not going to solve the kind of problems that we are addressing ourselves to here.

[D-136] * * *

Cross Examination

By Mr. Gravatt:

Q Dr. Nixon, you have made several statements that I would like for you to clarify for me, please. A Yes, sir.

Q That Richmond is becoming all black, no likelihood of meaningful integration in Richmond. You have referred to viable racial mixes as being essential to quality education. What do you mean by viable education mix? A You mean viable racial mix, Mr. Gravatt?

Q Racial mix, yes. A I support the definition that has been provided to us by the accumulating body of research that has been used in testimony in Court and that is a high percentage somewhere in the range of 20 to 40 percent.

Q In other words, you are prepared to identify your ideas that have been developed here by Dr. Pettigrew and by Dr. Carmichael? [D-137] A By identify if you mean that I generally agree with the thesis that was being developed there, I would have to answer yes.

Q That is what I mean.

Well, do you define a black school in the way that it has been defined here as a school that has 65 percent black or 60 percent black? A Well, it is awfully difficult to relate it to specific percentages. It depends upon what has happened before and what has happened after.

Generally speaking, as we have looked at the data presented, it would suggest that you reach a point where the school begins to move very rapidly toward a much higher percentage of black, and when it is in this process it is generally referred to as a black school.

Q Well, you say we have to see what happened before and what happens after.

Do you think that we have had time under the plan that is presently in effect in Richmond to know what will happen after? A I have looked at the data available over the past ten years, sir, and it occurs to me that these data show that the Richmond school district is [D-138] progressively moving toward a higher percentage of black students. With the implementation of Plan III it would be my professional judgment that this percentage would move faster with an increasing rate.

Q Well, will you tell me, please, from an educational point of view, what is wrong with a school that is 60 percent black? A You have to relate that to the specific situation, sir. There may not be anything wrong with it. It all depends. For Richmond, and I have been provided the data

on Richmond, I have looked at the composition of the Richmond school district, and the composition of Henrico and Chesterfield County, and I would have to judge that one that is now 60 percent or 65 percent in Richmond is not likely to stay that way very long. It is likely to become, to have a much higher percentage of black very quickly. And that is not a stable kind of situation that we want to achieve in order to try to promote higher quality educational programs for all children.

Q Well, let's assume that it didn't become 60 percent—stayed 60 percent. A It might not necessarily be bad or good.

[D-139] Q So that if it stays stable and stays 60 percent then you would find no justification for a consolidation of the schools? A Well, here again, are you saying that you are proposing a hypothetical situation that we can say that the Richmond school district will remain 65 percent white and 35 percent black, or some variation of that, from now on? And would that be bad?

Q That's right. A In Richmond, it would, in my judgment, because you have right adjacent to it a school district that is just the opposite in terms of its percentage of white, and that is what we are trying to get away from here, is this early identifiability of the respective schools in this region and this area.

Q The next question I was going to ask you. Why would a school that is 65 percent white be all right and a school that is 65 percent black would be wrong? A I have not said that.

Again, I refer back to the situation that we have. If we are going to deal with other hypotheticals, I think we have to isolate them and talk about them specifically.

[D-140] Q Well, I didn't start the hypothetical. You assumed the hypothetical that the 65 percent school in Richmond was going to become 100 percent black. A I didn't assume that hypothetically. I made that professional judgment on the basis of what has happened over ten years.

Q Maybe mine is not quite as professional, but it is just as hypothetical. So I assume that it wouldn't do that, and I ask you what is wrong with that? Would that be all right? A Not in Richmond it wouldn't be all right in my judgment, because again I have to come back to the situation as it exists here. You have white over here and black over here. In a biracial society, in the Richmond area, in my judgment this is not the most desirable way to try to move forward with an educational program, a quality educational program.

Q Well, what is wrong, then, is to be found in somebody's mass attitude, or the mass mind of people in the community, not in the ratio that you find in the school? A Well, certainly again, it is difficult to separate the attitudes that individuals have about what makes up good education or makes up a good school [D-141] and what makes up a bad school.

Q Well, if the people in Richmond all say 65 percent black school is an excellent thing, were in accord would that make it bad or would that make it good educationally? A Well, if Richmond were isolated out, it was considered independent, which obviously you cannot do, but if that is what you would like me to do, I will, and you want to consider it independent of its relationship to Chesterfield and Henrico County, and everyone there thought that 65 percent black school and 35 percent white was a good

school, and a situation of stability had been attained, I would say fine.

Q Well, you haven't got any actual factual evidence. You have got your own professional opinion? A That is the only thing I have.

Q Based upon whatever time you spent studying the Richmond situation that the percentages in this 65 percent black school will increase? A In my professional judgment that is what will occur.

Q Well, don't you think it might be advisable to wait and see whether it happens or not [D-142] instead of anticipating it, consolidating the school and then find out it doesn't happen? A No, sir, I do not.

Q You think we better act upon the supposition? A I think the supposition is well documented. We do that every day. We operate on the basis of the amount of information that we have about a situation. I would suggest that we have enough in this case to very adequately predict what is likely to happen based on what has happened in other situations, based on the total picture that is available to us.

Q Well, nobody has taken the step that you have suggested, so we can't predict what would happen there, can we? A I can predict it, yes, sir.

Q You can predict? A That is what I am doing. I am making a prediction based on the data that is available.

Q Have you got any data where school systems, separate school systems, have been consolidated as is proposed in this case? A In the exact same fashion as we are

[D-143] talking about here, I think, as I understand it, and has been said by others, this is kind of a first time.

Q That's right.

Now, would you recommend the same thing that you are saying here for Washington, D. C.? A Well, I don't know, I have not studied Washington, D. C. I have not been provided with the similar data that I have been provided about this situation. I just can't answer that question because I don't know.

Q In other words, this is just for this particular two county arrangement, Henrico, Chesterfield, and Richmond. It is not to be applied, and doesn't, your concept, doesn't encompass anything else? A I would not say that the concept does not encompass anything else. I am saying that we are examining the data based on this situation, what we have available to us that would help us resolve the issue that is before us here.

I would say the concept has applicability in other situations; however, one would have to examine those independently.

Q Is what you are suggesting about, you stated a little differently from what the other [D-144] witnesses have, you said that education has to do with people's attitudes and values, and other people say it has to do with their self-perception, visualization of themselves in their capacities to success and to aspire to things, and you translate that in terms of attitudes and values, is this correct? A Well, I have included in what the education profession would call the affective domain which includes attitudes and values. If you want to move beyond that point, I think one's perception of self, perception of others, would be highly related to that same thing.

Q And you feel that the students in the City of Richmond would feel that it was obvious that they have a segregated school system, a dual school system in the City of Richmond and a white dual school system in Henrico County and Chesterfield? A I think it is quite obvious.

Q I say you think the students inside the City would feel that way? A I very definitely do.

Q And do you feel that this would be hurtful to them? A Yes, I do.

[D-145] Q For them to feel that way? A Yes, I do.

Q Have you got any research or anything of your study in the City of Richmond that supports that? A I have not studied it in the City of Richmond; however, we are dealing with general principles again, I think, as you mentioned a moment ago, and we have available to us an accumulating body of evidence which suggests that.

Q Have you made any effort to ascertain whether or not the children in the City of Richmond, black children in the City of Richmond, and their parents, will be responsive to being put on a bus and carried out to the counties? A I have not done any studies in Richmond, no sir.

Q Well, would it be essential to the success of your program in the field that you are describing as attitudes and values that these children themselves would accept the idea and cooperate, at least in the idea of being taken out of their home neighborhoods and carried into the counties? A Well, I think there are some general [D-146] principles again which apply. There would probably be some who initially would not think this so desirable. There would be others who would.

The issue at stake is, again coming back to Richmond, is to create an educational environment which promotes stability, which promotes a viable racial mix, and which promotes the educational environment necessary for a quality education program. And I do not think that that can exist under the way in which things are now moving.

Q Do you think that the black children of the City of Richmond might, once we get this going and started bussing them out, that they might be perceptive enough to understand that the School Board of the City of Richmond had initiated this in order to get some of them out of Richmond so that they would not be in the majority and the white people would be in a more acceptable racial balance to the black in the City? A Their perception, as I would postulate about it would be that this would be a very desirable end to try to achieve.

Q You think they would feel real happy with the idea that in order to give the white people in Richmond a little more attractive racial balance [D-147] as far as they are concerned that they would be taken out into these counties and dispersed with the white people in Chesterfield and Henrico? A Well, I don't look at it as being a dispersion. I look at it as trying to achieve or create alternative educational organization where you can get a viable racial mix which would serve to the advantage of white and black pupils, one that would promote stability and one that would contribute to quality education.

Q Well, if it should turn out in the course of the determination of this case, and I expect it will take some time, that the ratio in the City of Richmond remains approximately 65-35 and the schools didn't, all at once just become all black, then what you have said in anticipation of this

would destroy the validity of the effective opinion that you have given here? A No, sir. I don't think so because no matter what—I mean, even if the Richmond schools should remain at 65 or 70 percent—30 percent white, the fact remains that immediately adjacent to that are school districts which are less than ten percent black or greater than 90 percent white. The disparity [D-148] continues to exist and the problem remains.

Q So that would be the reason then, because they are just out there and just have ten percent black, it just would be that, that would be in itself a reason to go out and consolidate them? A That reason, the consolidation is to bring about the kind of educational program, the creation of the kind of educational environment that they want, and if it requires techniques that result in that, we use them.

Q Well, if 65-35 is acceptable there would be no reason for going out except just that they are out there anyway? A I don't understand your question.

Q No educational reason. Well, I understood you to say that if 65-35 would remain stable that this would be all right. A I didn't say that that would be all right in this situation. You recall that I responded in this way to that hypothetical situation which isolated Richmond and did not consider it in conjunction with the surrounding counties.

Q Well, this means that if the surrounding counties were not there, 90 percent white and ten [D-149] percent black, then 65-35 would be all right? A Well, again, the hypothetical case that we are talking about where there were a number of other factors which we had considered, number one is everybody, we had made the supposition

that everybody thought that this was a highly desirable situation.

Q Right. A And taking it in isolation without looking at it in the context with which we are looking at it in reality here, if you had a 65 percent black 35 percent white and those individuals there did see that as being a highly desirable situation, I won't say it is inherently bad. That is the point I was making.

Q Right. So it is not inherently bad and what makes it bad is what somebody else thinks about what the public generally might think about? A I don't get that question.

Q That is what you have just said, isn't it? A I said that the acceptance and the way in which a situation is perceived is important. You can't just discount it. It is a significant factor [D-150] that has been dealt with.

Q Well, all right.
I think that is all, Judge.

The Court: Mr. McIlwaine?

Mr. McIlwaine: Could we have a brief recess?

The Court: We will take a brief recess.

(The witness stood aside.)

(A recess was taken at 3:00 to reconvene at 3:15.)

(The witness resumed the stand.)

Cross Examination

By Mr. McIlwaine:

Q Dr. Nixon, I have just a few questions.
I believe that you stated that you are a believer in edu-

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APPENDIX

VOLUME II (In Three Volumes) Pages 449-896

In The

Supreme Court of the United States

October Term, 1972

No. 72-549

THE SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,

Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,

No. 72-550

CAROLYN BRADLEY, ET AL.,

Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

CERTIORARI GRANTED JANUARY 15, 1973
PETITIONS FOR WRITS OF CERTIORARI
FILED OCTOBER 4, 5, 1972

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cational systems using modern technology in the process of educational development? A Yes, sir.

Q Have you made a study of the Henrico County school system to determine whether or not they have adopted these techniques? A No, I have not.

Q Then you don't know whether or not they have already put these techniques into effect and are [D-151] using them effectively? A The kind that I am talking about, the likelihood would not be too great because I do know something about how much is being spent there and I would say that if they are using them within the context that I am, it would be the only place I know of.

Q And what context are you using them in, Doctor? A Well, it is of course, on some kind of a continuum, and I am talking about educational technology to mean rather extensive use of electronic data processing, of data retrieval systems, of an educational development capability within the school district, and these kinds of things.

Q I see.

You also testified, Doctor, that the studies having to do with size of school divisions or school districts relates mainly to minimum sizes of school districts, is that correct? A I think that that is true.

Q Are there studies that relate to optimum sizes of schools? A Very often the word "optimum size" will [D-152] be used, also.

Q And from your knowledge of these studies what is normally described as the optimum size for school districts in terms of pupil membership? A Optimum for what?

Q Optimum within the context of the studies that you say relate mainly to minimum size? A Well, it depends,

of course, again on what factors you are talking about. Optimum size for community school systems, that is community controlled, might be seven or 8,000 in the way that that term is used today in some districts. Generally speaking administrative decentralization optimum size is used anywhere from, oh, 25 to 30,000 to 50 or 60,000.

If you are talking about economy, quality economy, or if you are talking about net current expenditure or special services like adult education, vocational education, and other kinds of things, we would have to look at them in terms of a specific range.

[D-153] * * *

Q And in your view of the recommendation for the consolidation here, the overriding factor, if I understand you correctly, was the attainment of a viable racial mix? A Yes.

Mr. McIlwaine: Thank you, Doctor.

[D-154] I have no further questions.

The Court: Mr. Gray?

Cross Examination

By Mr. Gray:

Q Dr. Nixon, your field of expertise is education? A That is correct.

Q You are not a social psychologist? A No, I am not.

Q Any questions which you may have answered which were over into that field are outside of your area of expertise? A I am not sure of the way in which you are using that. Educators base decisions on the constriction of

other disciplines, other fields. Certainly a person whose fields of specialty is education would certainly draw on the accumulation of information that was available to him from other disciplines.

Q Yes.

Doctor, I understand that you would use it, but I am trying to develop whether or not you consider yourself qualified to answer questions in the field of social psychology [D-155] A I am not a social psychologist.

Q All right, sir.

Doctor, you heard—well, let's first talk about—you made a comment at the very first of your testimony that you were—you said you looked at it in reference to the plan.

Now, in how much detail did you study the two plans that are before you, Plan III and the consolidation plan? A I examined it in some detail in terms of the school enrollments, the percent white and percentage black. I looked at it in terms of the different levels.

Q What do you mean by the different levels? High school? A Yes.

Q What did you look at at the different levels? A The percentage of black and white in the K through five, as it applies to Richmond, the middle school, which is six through eight, and high school, which is nine through twelve.

Q What else did you look at? A The racial composition of the schools [D-156] in Henrico and Chesterfield counties. The different schools there and their racial makeup, and what has happened over the last several years with regard to those racial makeups. These kinds of things.

Q I see.

Well, now, do you know what the per pupil expenditure is annually in Chesterfield, Henrico, and Richmond? A I read that but I can't give it back to you verbatim.

Q Do you know what the pupil-teacher ratios are at each level in each of these divisions? A No.

Q Did you look? A The general pupil-teacher ratio I did look at. I don't know. I don't recall if the data I examined broke it down by grade level or by division. Q Well, do you know which one of the three had the highest pupil-teacher ratio? A I don't recall.

Q I see.

Do you know which one has the highest per pupil expenditures? [D-157] A Richmond.

Q Which one has the second highest? A I couldn't be certain about that. The other didn't vary that much.

Q You mean there was a bigger variation between Richmond and the counties than there was between the two counties? A I can't say exactly.

Q You just don't know.

Do you know how many administrative personnel per 100,000 students there are in each of the three systems? A No. I don't.

Q Do you know how many schools in each of the three systems have music teachers? A No, I don't.

Q Do you know anything about the three systems other than the racial composition? A Well, I know something about the total enrollments. I knew something about the general makeup of the topography. I know something about

the way in which the different levels are organized, various things like this.

Q Do you know what the number of square [D-158] miles in Chesterfield is? A I have heard that figure given in Court.

Q You didn't use it in connection with any of the studies you made? A No.

Q Do you know what the square miles in Henrico County might be? A I don't know exactly.

Q Well, did you use it in any of your studies? A I used it in terms of the—within general limits.

Q Do you know what the density of the students per square mile is in any of either of the two counties? A I don't know specifically.

Q Well, take off—just give me a rough idea of what you used. A I know within the metropolitan district there exists within subdivisions one through five a population density that does not vary dramatically. I do know there is some in subdivision six. I know that within the—I am speaking here primarily of the [D-159] section of—I do know that in a section of the Richmond school district that has been annexed recently, the relationship in that—

Q Do you know how many remedial reading teachers are employed by each of the systems? A No, I do not.

Q Do you know how much of an accelerated curriculum exists in each of the three systems? A No.

Q Do you know whether there are speech impairment classes in each of the three systems? A No.

Q Do you know what the salaries of the principals in each of the three systems are? A No.

Q Do you know the extent of extracurricular activities in either of the three systems? A In a general way.

Q Well, how general? A Well, the fact that they do have extracurricular activities, they provide for them after school and they provide transportation, and these kinds of things.

Q On the basis of that information, you are [D-160] prepared as an educational expert to say to this Court that Chesterfield County and Henrico County cannot provide a quality education? A Those factors have no relation to the recommendation that I am making to this Court.

Q In other words, there is one factor and one factor alone that you are dealing with, and that is the factor of race? A Well, I have enumerated some other factors that would—

Q What were they, Doctor? A I have talked about other kinds of things that would be an advantage, looking at this from a metropolitan point of view as opposed to separate school system's point of view.

Q What were they? One of them, so maybe you will refresh my memory, and then I will know the type of thing you are talking about. A I talked about some other kinds of services that could be provided.

Q Budget evaluation and that sort of thing? A Yes.

Q Do you know whether Chesterfield County has a system for budget evaluation? [D-161] A I do not. I do know that the educational technology—

Q No, Doctor. Now, please, sir. Do you know whether Chesterfield County has a procedure of budget evaluation? A I would assume that they do.

Q Well, do you know whether or not they have what is considered a modern system of budget evaluation? A I don't know what kind of budget evaluation system they have; therefore, I am not prepared to evaluate it.

Q So you really don't know whether that will be an advantage of this school system or not? A Well, that is not the type that I was talking about.

Q I thought that is just what you told me. Excuse me. Give me one, please. A Well, for example, a data retrieval system.

Q Do you know whether or not they have one? A I do not specifically know that they do not have one. I would say that—

[D-162] Q Well, now, Doctor, excuse me, but you are going to guess that they don't? A On the basis of the amount that is being spent per pupil and the range of that I would say it would be almost impossible. I know of, you know, I would say if they do it is the only one in the country.

Q Did you mention ETV as one of the things or advantages that might come from this? A I didn't mention that.

Q You did not.

All right.

I have a note on it. I must have been dreaming

Do you agree with the statement that Mr. Carmichael made that the home is probably the most important, as between home and school, that home is more important in

environmental factors? A I think most educators agree with that position.

Q Did you say to the Court that the duty of educators is to create, is the creation of an environment in which quality education can be reached? A I missed the first part of that question, sir. I am sorry.

[D-163] Q Well, you correct me if I am wrong, but the thrust that I understood of your testimony with respect to the goals of quality education, you had a very, very long answer there in the beginning about quality education and I couldn't get it down, but I took down the note that one of the goals that you had was the creation of environment in which quality education can be reached? A Yes, sir.

Q And the most important segment of that environment is the home? A Well, I was talking about strictly the educational environment when I made that statement. Naturally the home environment is very much interwoven within that.

Q The changes that you hope to bring about are directed to the schools and not to the home? A Well, here again there would be both.

Q You said, Doctor, that Richmond is rapidly becoming black. You do not agree with Dr. Carmichael that it already is black? A Pupil population is close to 70 percent which is a high dominance of black pupils.

Q But you do not consider it now as an [D-164] all-black system? A Well, within the context of Richmond I think that it is, because it is adjoined by one that is practically all white.

Q I see.

Now, you indicated that you did not—the size of the school system wouldn't bother you at all. Have you ever administered a school system of 100,000 students? A By administer, you mean have I been superintendent of a school district of 100,000 pupils. The answer is no.

Q You indicated that educators have many tools with which to reach their goal. Do you know how much effort has been put and how many tools have been used in trying to make the plan which is now in effect in Richmond work? A Do I know of how many tools, how many different procedures or—

Q How much effort has gone into trying to make it work? A No effort, to speak of, with Plan III. As I understand it, it is to be implemented in the fall.

Q The plan that is now here I am talking [D-165] about. A I think a great deal of effort has gone into it.

Q Do you think all the effort that could be made has gone into it? A I never make that statement about anything.

Q Well, for example, you have a laboratory which prepares teachers in the hope of doing a better job in this situation, is that correct? A Yes, sir. That is one program that operates at our lab.

Q More extensive use of that type of program would help in this type situation? A I think it would help. I don't think it is the issue. The question is what would be the most appropriate action to deal with the situation as it exists, and in view of the facts that have been provided and given the consideration of all of the alternatives, I would not select that alternative. I would select the one that I am recommending.

Q I see.

Then you suggest that there are alternatives. You just like yours best? [D-166] A Naturally.

Q Did you hear Dr. Pettigrew at one point in his testimony talk about the acceptance after the fact? In the light of that, you still believe that after a year of experience with a greater degree of desegregation that Richmond will still move away from other—the white Richmonders will still move away from the school system? A Yes, I do.

Q But you have nothing in this community or knowledge in this community on which to base that opinion. You are basing it on what has happened other places? A No. I am basing it on what has happened in other places, and what has happened here over a period of ten years.

Q Well, Doctor, have we had extensive desegregation here for a period of ten years? A I hesitate to use the word extensive. I am not sure how one would use that. I think there have been, you know, there have been progressive steps toward—

Q And you have made an analysis to determine how many white pupils have left the Richmond school [D-167] system for the purpose of escaping from the more desegregated schools? A Well, a cause and effect relationship is always extremely difficult to establish with the degree of finality that one would like. You have to put it in the context of all the information available to him and I think that based on the information that I have examined, on the basis of the experience that I have had, and on the basis of looking at what has occurred in other situations, I am willing to draw that conclusion.

Q Have you been given figures on how many pupils left the Richmond school system to go to Chesterfield and

how many left to go to Henrico? A We have a general indication of that. The number that have left the Richmond school district over the past years. I do not have definitive data that would show the fact that all of these are now located in Henrico and Chesterfield counties.

Q You don't have any numbers on that? A No.

Q No. A I might hasten to add if it is important to do so that we can make some correlation between the [D-168] number of pupils that have been admitted in Henrico and Chesterfield County and the number that have left Richmond. Here again, one is able to draw on the studies of others.

Q Here Dr. Pettigrew talked about the Hawthorne effect in response to a question of mine. A I am familiar with the Hawthorne effect as it applies to research.

Q The Hawthorne effect, as I understood from Dr. Pettigrew, was that the control group, the group being tested, would perform better than the overall group just because special emphasis was being given to that group. Is that right? A That is a general statement about it.

Q Pretty generally what it is all about.

Do you think there is any possibility that if we treated Richmond under Plan III as an experiment and put all of our effort behind it that we would get some desirable Hawthorne effect? A No, I do not.

Q Do not.

Thank you, sir.

The Court: Mr. Byrne, do you have any examination?

District Court Proceedings of August 19, 1971

[D-169] Cross Examination

By Mr. Byrne:

Q Did I understand you to say from an educational point of view, you believe subdivision lines have no relevancy? A I believe I made that statement.

Q Would you make the same statement with reference to state lines? A I think so.

Q Would you make the same statement with reference to country demarcations? A I think that might be taking it a little far.

Q Thank you, sir. A You may be dealing with a different kind of society across the line. Presumably we are not doing that when we cross state lines.

Q Thank you, sir.

[D-172] Redirect Examination

By Mr. Little:

Q Dr. Nixon, Mr. Gray recited many criteria for evaluating a system such as pupil-teacher ratio, number of music teachers, number of bands—I don't know whether he mentioned bands, but that is one of the old ones. Can you describe these as traditional or older methods, traditional methods of evaluating a school system? A Well, I think they are traditional ones. I think some of these, some of these factors continue to be important. I would not minimize them, however. I think that, as I indicated to Mr. Gray, I saw, I did not see that they had any particular relevance in terms of the kind of recommendation that I was making. I saw that these factors, he could have gone on to list 40 or 50 others very similar to this.

Q Would any of the ones that he listed be considered by you as controlling factors for solving a problem of racially identifiable schools? A No relationship.

* * *

[D-173] Recross Examination

By Mr. Gray:

Q Doctor, I believe I asked you about these factors with respect to providing a quality education. Do they have relevance to providing quality education? A Well, they would represent a possible component in a quality education. Quality education must be made up of many factors.

Q And race is one of them? A Viable racial mix in the Richmond, Virginia, Henrico, Chesterfield metropolitan area very definitely is.

* * *

[D-201] JAMES H. JOHNSON

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lucas:

Q State your full name and address, please. A James H. Johnson, 206 Seaton Drive, Richmond, Virginia.

[D-202] * * *

Q Is your present address in the county or in the City? A Henrico County.

Mr. Byrne: Could he repeat the address?

The Court: He hasn't said yet. He said his present address was in Henrico County.

The Witness: 206 Seaton Drive.

The Court: Yes, he did say that before.

By Mr. Lucas:

Q Are you buying your home at that location? A Yes.

Q How long have you lived there? A Five months.

Q Both black and white people live in this particular subdivision? A Yes.

Q Do you know how long that situation has been true? A Approximately four or five years.

[D-203] Q Have you looked for another house since you have moved into your present address? A Say it again, please.

Q Have you searched for another house? Have you sought to move? A No, I haven't.

Q Did you have any difficulty in acquiring the present house that you are in? A No.

Q How did you go about acquiring it? A My realty agent found the house for me.

Q And was it a foreclosure? A Yes.

Q And is this a government subsidized house? A Yes.

Q In August of 1970, were you looking for a house then? A Yes.

Q And how did you go about looking for a house? A

My wife contacted the agent that was listed in the Richmond newspaper about seeing this particular house. It was not listed in the newspaper [D-204] at the address or where, just gave the location, but no address.

Q You say location. You mean the subdivision? A The subdivision, yes.

Q What subdivision was that? A Chamberlayne Heights.

Q Where is that? What county? A Henrico County.

Q All right.
And did it have the street number? A No.

Q Did it have the name of the real estate agent? A No—yes, the agent and his company.

Q Okay.
Did you and your wife contact the real estate agent? A She did contact him.

Q Yes. A Yes.

Q Did you make an appointment to see the house? A Yes.

Q Will you tell us in your own words what [D-205] happened with respect to this appointment? A Well, the agent asked us to meet him at the address he had given us at 5:30 that afternoon. When we arrived at the address, we noticed the gentleman standing on the steps, as he said he would be, looking out for us in case we became lost. So we had to go to the end of the street and make a U-turn and come back in order that we may park in front of the house. After making the U-turn and coming back, we noticed the agent was not outside of the house.

So we went up to the front door and knocked and waited about five minutes and no one answered the doorbell.

So we then drove around the block and watched to see if the same gentleman would come out. He did. He had to come out of a one-way street, somewhat. This is the only way he had to come out of the division. So I backed across the street so as to cut him off.

And there was enough room for him to get by, evidently. I turned around and gave chase, but I was unable to stop him.

Q Did you subsequently contact this man that was supposed to meet you? [D-206] A Yes. We did contact him two days later and asked him did he not have an appointment with us at the appointed date and he said—

* * *

By Mr. Lucas:

Q What happened after you contacted this man? Did you call him or did your wife call him? [D-207] A My wife called him but I was listening in.

* * *

By Mr. Lucas:

Q As a result of your conversation with this real estate agent—by the way, do you recall his name? [D-208] A Pardon?

Q The real estate agent, do you recall his name? A Yes. I recall his name.

Q What is his name? A His name was Mr. Jackson.

Q After you contacted him, did you make another appointment to see the house? A No, we didn't make another appointment to see the house with him.

Q Why not?
Did you try to? A We didn't try because the—

Mr. Gravatt: I think why he didn't try is irrelevant to anything.

The Court: I suspect he didn't try because he concluded either you didn't want the house or it wasn't going to be sold to you, is it?

The Witness: It wasn't going to be sold.

By Mr. Lucas:
Q Why did you conclude it wasn't going to be sold to you? A Because I was black. I am black.

[D-209] * * *

Q Is Chamberlayne Heights subdivision, at the time you were looking at a house there, was it a white subdivision? A Yes.

Q You mentioned that your wife made this call after seeing the ad in a newspaper. Was there any particular reason why your wife called, anything from previous experience? A Yes. There was a reason for her calling due to the fact that I had had difficulty on other occasions with a real estate man in that the realtor would try and distinguish the voice and the location by the address which you would give him as to where you live, and in my opinion he would give some run-around.

Q Did you try a couple months previous to that to see a house in Chamberlayne Heights? A Yes.

[D-210] Q And tell us what happened at that time. Where did you see—did you see an ad in the paper or just

see a house you liked? A I saw a house. I saw the realtor's name on the premises. I called the realtor and made an appointment to see the house. The realtor did not show up when he said. He did not show up on the date and the time that he said he would.

Q What did you do, if anything? A Well, I again called him and asked what had happened and made another —I called and asked what had happened and the house apparently was sold or had a prospect [*sic*] buyer.

Q So you didn't get to see that house. Did you check to see if the house had been sold? A Yes.

Q When? A After I had seen the advertisement in the newspaper, after I was told there was a prospect buyer, my wife called under an assumed name and the realtor made another appointment.

Q Why did you have your wife call? Did I understand you to say they try to identify you as to white or black? Why did your wife call? [D-211] A Well, he had just told me two days prior that he had had a prospect buyer. The house was in the process of being sold.

Q All right. So when she called, did she make an appointment to see the house? A Yes.

Q And did he make an appointment with her? A Indeed.

Q To show the house to her? A Yes.

Q What happened after that? A After giving us directions to where the house was, when we got there the realtor didn't have a key to the house.

Q I guess you didn't get to see that house? A No.

Q Did you make another appointment to see that house? A No.

Q Did you file a complaint with any agency? A I filed a complaint with HUD.

[D-212] Q Was that complaint investigated by them? What was the result of your complaint? A The owner of the house informed HUD that they had relieved this Simmons Mann from handling the selling of the house and therefore making them no right to try and sell the house any more. So therefore, reconciliation was made, whereas Simmons Mann had to—

Q Are you saying Simmons Mann? A The Realty Company, yes.

Q Okay. A Every quarter file a written form signifying the minority groups that they had shown houses in this area.

Q Did you get that house? A No.

Q As to the first house you told us about in the Chamberlayne subdivision, the most recent incident, did you also file a complaint with HUD with respect to that house? A Yes. I filed a complaint with HUD.

Q And what happened with that complaint? A It is now under reconciliation.

* * *

[E-4] PROCEEDINGS

(August 20, 1971) (Friday at 9:30)

The Clerk: Civil Action 3353. Carolyn Bradley et al. versus the School Board of the City of Richmond, et al.

Case continued from yesterday.

[E-30] * * *

ALFRED HENDERSON, SR.

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lucas:

[E-31] * * *

Q Mr. Henderson, do you own land in Henrico County? A Yes, sir.

Q Did you appear before the Board of Henrico County in an attempt to secure rezoning of your land similar to rezoning granted to some adjacent property? A Yes, sir.

Q Do you recall approximately when that was?

[E-32] * * *

The Witness: It was approved by the Planning Commission on May 14, 19—I mean May 14, 1970.

By Mr. Lucas:

Q Is that your first? A It must have been the next meeting after that. That was the first time I went before the Board of Supervisors.

I can't give you the exact one. I might have it in here but—

Q What did you seek from the Planning Commission? Let's go into that first. You had how [E-33] many acres of land? A I had approximately 20 acres, I think 19.81.

Q What did you ask the Planning Commission to do? A To rezone, approve the rezoning that had been recommended by the Planning Commission.

Q What did you first ask the Planning Commission to approve? A To Rezone my 20 acres of land from A-1 agricultural to R-5 residential.

Q Had they recently rezoned some other land in that same manner in that area? A Yes. They had rezoned a semi-circle around me, approximately a semi-circle around me.

Q And did they approve your entire application, or part of it? A The Planning Commission, let's see, now, let's get it right. The Planning Commission approved ten acres of it, or half with the recommendation that the other part be rezoned when I secured additional ingress-egress.

Q Would that require the purchase of more land? [E-34] A I beg your pardon.

Q Would you have to buy some more land to do that? A No. All I had to do was get permission to cross over somebody else's land.

Q An easement, in other words?

All right. The ten acres that they did not approve at that time, was that adjacent to a built up area or residential area? A No.

Q No residential areas there? A That wasn't adjoining no residential area.

Q All right, sir.

Now, what were you seeking to build on the ten acres that were approved? Did you make any application to any other agency? A My plan was and is to build apartments for rent.

Q All right.

Did you go to the Federal Housing Administration and see what program would be suitable? A Yes. That was the next step after my ten acres was approved by the Board of Supervisors. [E-35] Then I went to the—

The Court: Let me get it straight, now, just a moment. I thought a moment ago you said that it was the Planning Commission. Did the Board of Supervisors approve ten acres, too, Mr. Henderson?

The Witness: Yes, sir. They approved ten acres, but they denied ten acres.

The Court: The Board of Supervisors?

The Witness: Yes, sir.

The Court: All right.

By Mr. Lucas:

Q All right. On the ten acres that were approved, did you go to FHA and talk with them about programs that might be available? A Well, I didn't know what to do. I didn't know where to go. I even asked the Board of Supervisors did they know anything, give me any information, to give it to me so I would know how to handle this. After all, I am a truck driver. So I went to the FHA to find out

what steps to take, because a truck driver doesn't have enough money to build a project.

So they made a feasibility study. They had me to come up. I went up and they told me they, [E-36] they advised me that according to their feasibility study that they would recommend for that area—

Q 221-D-3? A 221-D-3, that's right.

Q Is that right?

Rent supplement program? A That is rent supplement.

Q Did their feasibility letter determine whether or not there was a need for that program for that type of housing? A Did their feasibility show that?

Q Yes. A I don't know.

Q You don't know?

Did you bring your files on that? A On the feasibility?

Q Yes. Did FHA give you a feasibility letter? A No.

[E-37] * * *

Q Did you go before the Henrico County Board of Supervisors after you met with the FHA people? A Yes.

Q And why did you go to the Board of Supervisors? A The FHA instructed me that I would have to get the County Board of Supervisors to, how should I say this thing, to—

The Court: What did you ask the Board of Supervisors to do at that time? That is what he wants to know.

The Witness: In other words, they said the Board of Supervisors would have to give their consent or approve

the participation of any housing units with the rent supplement program of the federal government.

By Mr. Lucas:

Q And did you appear before the Board of Supervisors? [E-38] A Yes, sir, I did.

Q And did you make a statement to them about, with respect to the need for low-cost housing in Henrico County? A I possibly made a statement.

Q Can you recall the substance of your statement? A I think I remember it.

Q Would you tell us what it is, please? A I told the Board of Supervisors that— let's get it right. That we, as a county, that we as a county have no place for our unfortunate families, and that I felt that sooner or later somebody would come along and force us to make steps to take care of our unfortunate families. I think that is the essence. I can't quote it.

Q Did you say something else with respect to the City of Richmond and these unfortunate families? A Yes, I believe I did.

Q What was that, sir? A I made the statement, I may have been wrong when I made it, but I made the statement that Henrico County could not indefinitely dump their unfortunate families on Richmond.

[E-39] Q Did you advise the Board of the FHA's feasibility study stating a need for the rent supplement housing? A No, I didn't advise them that FHA study showed a need for it. I told them, just like FHA told me, that according to their feasibility study that was the best project for that particular locality.

Q Did you subsequently receive a response from the Board of Supervisors of Henrico County? A Response to what?

Q To your appearance. Did you get a letter from them telling you what their decision was on your request? A On my request for rezoning?

Q No. On your request for the approval of the rent supplement program? A Yes, sir. I did.

Q Have you brought that letter with you, sir? A Yes, I have that.

[E-40] * * *

By Mr. Lucas:

Q A letter dated December 11, 1970 addressed to Mr. A. F. Henderson, Sr., 600 East Williamsburg Road, Sandston.

"Dear Mr. Henderson: At its meeting on December 9, 1970, the Board of Supervisors did not grant a request to pass a resolution permitting participation in the federal rent supplement program in Henrico County. Thank you for providing the enclosed [E-41] pamphlet Rent Supplement Program which is being returned to you as requested. Very truly yours, E. A. Beck."

The letterhead indicates Mr. E. A. Beck is County Manager for the County of Henrico.

Mr. Henderson, did someone working with me speak to you before the subpoena was served, before the Marshal people subpoenaed you? A Yes.

Q And did you then indicate to me after being served with a subpoena that you did not wish to appear voluntarily as a witness? A Yes. I told you that.

Q Did you express concern for your family, is that your reason, sir? A Yes, I did.

[E-43] * * *

Cross Examination

By Mr. Byrne:

[E-44] * * *

Q Now, Mr. Henderson, as I understood your testimony, you originally filed a request for 19.8 acres, or we will say 20 acres, approximately, of land from A-1 agricultural district to R-5 residential? A Yes.

Q This was to permit you to construct apartments on this project, is that right? A Yes, sir.

Q I mean on this land.

[E-45] When you asked for your zoning classification, I assume from your testimony you did not have your financing, is that right? A Did not have what?

Q Your financing? You didn't know how you were going to build it, get the money to build it? A I didn't have the financing, but that question never came up.

Q All right, sir.

A portion of your property was inaccessible, it didn't have an ingress or egress from it unless you crossed somebody else's property, is that right? A No. I assured the Board of 50 feet of egress-ingress on one side and 13 feet of ingress-egress on the other.

Q And did they tell you that the county required 50 or 60 feet of ingress and egress? A No.

Q And not 13? A No, they did not.

Q Did you check the zoning ordinance to see what was required for roadways and so forth? A I went to Mr. —there is a man named Dodson?

[E-46] The Court: I think that is correct.

By Mr. Byrne:

Q Yes, sir. The man's name is Dodson. A I went to his office and he told me that 40 feet of ingress-egress would be acceptable if it was going to be a private road, but if it was going to be a road with my project and some other project on it, some other property on the same road, it would have to be 50 feet.

Q And on this other area you only had 13 feet? A This 13 feet I was recommending, I was offering as ingress-egress, would be emergency, to back up this 50 feet.

Q So the Planning Commission recommended rezoning half of your property, but they also recommended that the remaining one-half be rezoned R-5 when you came up with the proper egress and ingress, is that right? A Right.

Q You were willing to accept that at that time? A I was willing to accept what?

Q That recommendation. A Well, that was the best I could get.

[E-47] Q All right.

The Board gave you the same zoning recommended by the Planning Commission, did it not, sir? It zoned your ten acres to R-5? A Who did?

Q The Board of Supervisors? A No, the Board of Supervisors gave me the ten and restricted the others be-

cause, over the information that I had received from Mr. Dodson that since the school, this County had approved the proposed school site on one side, that he assured me that if I were to secure ingress-egress at a certain point, which would make my neighbors commit one certain piece of land for that ingress-egress, when the County made its finished, completed its master plan for the area that they would undoubtedly bring another road, at least one street through my property to that school which would give me two more ingress-egress.

Q Which would have made your property more accessible? A It would have made it more assessible.

Q All right, sir.

Now, wasn't this in November of 1970 that the Board took general action on your request? [E-48] A The Board of Supervisors?

Q Yes. On your rezoning request? A This notice says July 9, 1970.

Q July 9, 1970? A Yes, sir.

Q You are exactly right. Excuse me, I am sorry.

I stand corrected, if it please the Court. I read the wrong note.

Then if I understood you correctly, you went to FHA in order to obtain some way to finance this project? A I went to FHA for information, period. I didn't know how I would do it. Maybe I haven't made myself clear.

See, out of a clear blue sky I went to a zoning board meeting. Out of a clear blue sky here I found out that a semi-circle was being rezoned around me, and I couldn't allow myself to sit there in a semi-circle with A-1 and a

semi-circle of multi-family was going around me. I didn't feel like—I didn't feel like I could afford that. So out of disparity I got to do something. There is nothing more for me to do but jump up and go along with the rest [E-49] of them. So I tried to get mine rezoned, too. I didn't know what I was doing.

Q You didn't have anybody represent you. You made the presentation yourself? A As far as that is—as far as I was going, I was going by myself.

Q So at the time you went before the Board you didn't have any real concrete plan for the development of this 20 acres. You just wanted your zoning to be consistent with what was being done around you? A I was doing just like the other people that did that that went before me.

Q All right. And you didn't have any financing plan when you went before the Board? A I didn't have—I didn't carry it with them. They didn't ask me for it, but had they asked me for it, I had a mortgage correspondent that was in position to guarantee them that I had if they had asked me for it.

Q Did you have any plans done at that time showing what they were going to look like and the floor plan composition of the project? A No, I didn't.

[E-50] Q All right, sir.

So then you went to the FHA to see what you could do to finance the project here, did you not? A I went to FHA to find out what to do, period. I wasn't worried about the financing because Mr. Calhoun had assured me that he could get financing.

Q All right, sir.

After you went to FHA, you say they called you in for a conference and said as a result of a feasibility study they would make a recommendation? A Right.

Q For 221-D-3 rent supplement program? A Right.

Q But it was not your intention when you went before the Board of Supervisors and acquired the zoning to have a rent supplement program with reference to that property, was it? A No, it wasn't.

Q All right, sir.

Did they talk to you about the 236 program for rent supplements? A Who?

Q FHA? A Yes.

[E-51] Q That required, or was a little more restrictive, was it not, as far as participation by the tenants? A No. The 221-D-3—I don't understand you.

Q Well, all of the rent subsidy programs that you discussed with FHA, 221-D-3 and 236, isn't that right? A Yes.

Q The 221-D-3 was the least restrictive of the two, isn't that right?

The Court: Yes, Mr. Lucas?

Mr. Lucas: Your Honor, I don't know if counsel doesn't know or not, but that does not characterize the program. 221-D-3 can have a rent supplement component or it cannot. This is similarly true of 236.

The Court: I understand, but I don't think he is asking in that context as far as this witness is concerned. He considered it to be more restrictive or less restrictive, as the case may be.

Mr. Byrne: That's right, sir.

The Court: Objection is overruled.

The Witness: Well, I don't know how to [E-52] handle your questions, Mr. Byrne.

The Court: Well, in any event, you wanted one and not the other, is that correct? Or didn't it make any difference to you?

The Witness: I wanted, just like I told the Board of Supervisors, and I am saying now, if it were possible, I would like to build the best development in Henrico County, but I feel that I don't think any of us has the ultimate of what we want. I asked them to give me some advice, if they would, or anybody. I would open up to anybody. When the FHA made their feasibility study, I said, well, my goodness, if they are the facts, they have the numbers, they have the authority, they have all these things that determine these things, who am I to say that a 221-D-3 is not the best thing if FHA says it is. So therefore, I went along with FHA.

I also promised the Board of Supervisors that regardless to what happened that I would work 100 percent within the bounds and cooperation with the county government. That is one of the reasons I didn't want to come here and testify, because I feel like I am testifying against them.

[E-53] By Mr. Byrne:

Q All right, sir.

Now, did you take a resolution from FHA to the Board that you needed to get the rent supplement program approved? A Yes, sir.

Q And did that not encompass the whole county and not your specific project? A Now, I imagine so.

Q It didn't refer just to your project. It referred to Henrico County as a whole, did it not? A As I analyzed it, it was a proposed statement saying that the rent, the county would participate with the rent supplement program.

Q But it was not restricted to just your project? A Not as far as I know.

Q All right, sir.

Mr. Henderson, do you know that since March 5, 1971, such a resolution is not required? A No, sir, I didn't.

Q Have you been back to FHA since March 5, 1971 on the same type of projects? [E-54] A Yes, I have.

Q Do you now have in an application for rent supplement program on your property? A I don't have the application in now. My package is in the hands of my builder, and it is either in the mortgage company or in FHA right now. I couldn't tell you where it is.

Q Mr. Henderson, has anyone threatened you in this case, or your family? A No.

Q So when you told Mr. Lucas on direct examination you didn't wish to appear as a witness because you were in fear of your family, you had no basis for that, is that right? A I don't have any basis for it?

Q That's right, sir. A Haven't we had experts to sit here, on education, that said they were considered experts because they had been in the business 20 years and 30 years?

Q Has anybody threatened you or your family? A Shouldn't I be an expert when I have been under your hammer for 57 years?

[E-55] Q Yes, sir, except that I am not— A That is why I am afraid.

Q Has anybody threatened you if you didn't testify? A No, I haven't talked to anybody.

* * *

[E-56] ROBERT FRANCIS KELLY

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

The Court: All right, Mr. Lucas.

Direct Examination

By Mr. Lucas:

Q State your name and occupation, please. A Robert Francis Kelly, Superintendent of Schools, Chesterfield County.

Q How long have you held that position? A Just a little over two years.

Q What position did you have before you came to Chesterfield County? A Area administrator, area four, Fairfax County, Virginia.

Q How large is the Fairfax County school system? A 133,000.

Q And what is the function of an area administrator in a system of 133,000? A At the outset, and this was the original year of the area administration, it was to get the schools in closer relationship to the community.

Q And how large was your area? [E-57] A 30,000.

Q What were your duties as an area administrator? A To oversee the administration of the schools by school division, to prepare a budget for my division, to oversee the curriculum for that school division.

Q Did you in turn have responsibility to a central staff? A Yes, we had a complete central staff consisting of the superintendent, associate superintendent, and assistant superintendent in all of the major areas, and each area superintendent had a director of instruction and a complete complement of supervisors in all of the major academic areas.

Q Did you have separate offices? A Yes, sir, we did.

Q And how many other units were there in the Fairfax system? A There were four project [sic] for that time and five for the future.

Q And they were all about the same size? A Yes. About 30,000 at that time.

[E-69] * * *

Q The information received, and these were not from the Chesterfield Boards, but the State Boards, answer to interrogatories, shows some figures for Chesterfield County, the tuition grant program. Would you examine the figures shown, state contribution for the figures for the years 1954-'55? [E-70] A Yes.

Q How much is shown up to '70-'71 in local funds under that program? A Local funds? Four million—no, I can't read this because you do not have the decimals.

Q There is a comma after the first three digits? A No, sir.

Q $401,498.52
How much from State funds? A $428,879.16.

Q And the total? A Total $830,377.48. [*sic*]

Q And to the right there is a column with a breakdown, I think, from the 1965 to '70-'71. Can you give us those figures?
Correct me if I am wrong on that date, sir? A '65-'66 to '70-'71, according to the figures.

Q Thank you. A State, $238,676.20.
Local, $222,983.33.

Q For a total? [E-71] A $461,659.53.

[E-81] * * *

Q What other black schools do you have in your system as of '70-'71 school year? A What other black school system?

Q Black school. Not black school system. A Black school?

Q Yes, sir. A What do you mean, what other? What is the original one that you are basing it on?

Q Perhaps we might just disagree on Ettrick, but let's go to ask you if you know of another school that you, or I might characterize, as a black school? A I expect the school in which we have cooperative venture with Virginia State College, Matoaca Laboratory School could be considered—should be considered.

Q Why would you as a professional consider that as a black school? A I believe there is only one white child [E-82] in that school.

Q And what about the faculty in that school? A I believe the faculty is all-Negro.

Q Who pays the bills for that school? A Virginia State College with the ADA that we receive from the State going directly to the college.

Q Does it go from the State to the college or does it go to you and then in turn you transmit? A I believe it goes to my business manager and then he transmits.

Q It comes through the School Board? A Yes.

Q If it doesn't get there, you are responsible, right.

Now, how much money do you supply or does the State supply in Matoaca Laboratory School? A I believe the figure that my business manager found was to be between 12 and 15,000.

Q And how much does the County supply? A We supply nothing.

Q Supply no services that are worth anything? [E-83] A Well, let me back off on that.

We give Virginia State College the instructional materials, the monies that the State gives to all school systems, I believe, a dollar per child, that is given to them. We supply just bus transportation for those children. We have not considered Matoaca Laboratory as one of our schools and therefore they do not attend our in-service programs or the principal is not mandated by the school administration to be at meetings.

Q Would you say that the State operates the Matoaca School which you have identified as a black school? A I believe Virginia State College.

Q That is the State institution, is it not? A Yes.

Q And that State institution operates Matoaca School? A In that context, yes.

Q You supply money for books and so forth, and you supply the transportation. Do you also administer whatever federal funds might be allocable to that school? [E-84] A I do not.

Q Do they have a separate application, for instance the lunch program and the milk program, any of those? A I do not know that specific answer, Mr. Lucas.

Q Would it be fair to assume from your experience that this is administered centrally from your office? A Most likely, yes, sir.

Q That would be true of any other federal program which is a grant through the State to the County? A That is probably true.

[E-109] * * *

Q Did you, sir, make a statement in public inviting people in the annexed area, Chesterfield County, as a result of this Court's order, or coincidental with this Court's order for desegregation, inviting them to come back to the Chesterfield County system and that a place would be found for them? A Yes. Surely. They were Chesterfield [E-110] County residents.

Q These were people who, under the contract, were attending school in Richmond schools at that period of time, is that correct? A That is true, but the contract reads that we were to house Richmond children for a two-year period, while one year for elementary and two years for the

senior high, and not that Richmond would handle our children in their schools. And these people—

Q Didn't that contract call for you to each have some of the other's, depending on the area? A I don't believe so. The annexation decree is very specific.

Q It agreed between the school systems that you would handle some of their students until certain things happened? A I do not know. I was not part of that Court case.

Q When you came there, how was it operated? A That was the first year.

Q Wasn't there some Chesterfield students attending Richmond schools and Richmond students attending Chesterfield schools? A Yes.

[E-111] Q As they appeared after annexation? A That is true.

Q And obviously somebody had agreed to it. It was being done by both school systems, isn't that right? A It might have been agreed to but it is not part of the contract.

Q Do you know how they were being paid for, who was getting ADA on those students? A It was on a tuition basis.

Q The City was paying to educate its students and you were paying the City to educate yours? A That is true.

Q I guess you just exchanged checks somewhere along the line? A Well, that is a debatable point.

Q I don't want to get in another law suit. A Please don't.

Q Yet, despite this agreement, this operational agreement in any event, you made that announcement telling the Chesterfield people who had been assigned, I suppose for educational reasons, because it was not best in the operation of the system— A I would like you to clarify one thing, [E-112] though. You say I made an announcement.

Q Well you agreed that you did, and if I have in any— A Where?

Q —mischaracterized it, please explain. A There was concern on the part of some parents at Elkhardt, at Thompson, and I believe at Huguenot, but specifically at Elkhardt, requesting that they were Chesterfield County parents, they paid taxes in Chesterfield County, and requested of my Board that if there were room in Chesterfield County schools that they be placed in a Chesterfield County school.

Q This was during the semester? A Yes. This was during the semester, I believe, right at the outset.

Q Were you directed by your Board then, to make this public announcement so that the people would be aware of the Board's decision? A I contacted my Board by phone and told them the situation, what the situation was, that we were getting many phone calls, that we had, that someone had just called and said a group of parents were coming down to the school administration building and that my recommendation was that if they were Chesterfield County [E-113] students, that if could have them that we surely should do so.

Q Well, I take it you weren't housing them at that time because you had some capacity situation that dictated they stay in Richmond for at least a period of time? A No,

that is not in fact the whole truth. I believe that these parents at the outset were members of that particular community and had not asked Chesterfield County at that point to be taken back into the County.

Q You mean they had asked to stay in the Richmond schools? A They had not asked not to.

Q And the School Board agreed among themselves that they assign the people in this way and this was supposed to terminate a year or so later, was it not? A Two years at the senior high school level and one year at the elementary.

Q At the elementary, right. So you knew who they were and you agreed because you were paying tuition for them, or supposed to pay tuition for them, so you did know about it, it is not some accident? [E-114] A Oh, no. We knew they were there.

Q How did you know they were there? A Because we have records that indicated that in Elkhardt School we had students who attended that school the year before when it was Chesterfield County and we knew where they lived and therefore we knew that when the new annexation line was drawn they still belonged to Chesterfield County.

Q But you knew they were enrolled in Richmond schools because you were making arrangements to pay for them, and I know this was agreed before you got there, but this is what you were working with? A This is right.

Q All right.
So the school systems knew they were in Chesterfield schools and this was a consented arrangement? A We did.

Q And the method of payment was tuition, right? A We did.

Q Did you have space for them in Chesterfield County schools? A We did.

[E-115] Q You did? A We did.

Q Isn't there a policy adopted by the Board of Chesterfield County that says that they oppose people going outside of the system, that they would restrict—wouldn't permit transfers without—wouldn't permit people to go out? Isn't that the general policy of the Board? A Yes, it is.

Q What was it that made this Board make an exception, or was this just something done by the staff? A No, I believe it was a decision made during the annexation decree when Richmond, and I don't know the procedure that followed the statements in the annexation decree, that Chesterfield County would house all the students that Richmond felt they could not house for that year, but I suspect there was some sort of a statement or agreement made by the past superintendent and the Board that if these parents—there was no request for the parents to move from the annexation area and they would pay the tuition.

Q So it was an agreement as part of the annexation thing, whether it was explicitly stated in the order? [E-116] A My statement to you was that it was not written in the agreement.

Q In other words, Doctor, I don't mean to argue with you because I recognize that with two years in the system you can't be responsible for everything that went before, or the attitude, as long as those schools in Richmond, in Richmond by virtue of the annexation, were predominantly white schools, as long as their enrollment pattern was as it had been before the Court order, these individuals were

willing to stay in the Richmond school system? A Apparently so.

Q And when that changed there were calls to your office by some people and you took the initiative in response to this of contacting the Board. Now, did the Board have a meeting or did you just talk to the Board present? A No, I just spoke to the chairman.

Q And as a result of your conversation with the chairman, you made a public announcement inviting these people, not just those that came by your office and brought the issue to you, but inviting anybody who was in Richmond schools to come out, is that right? A Any Chesterfield County students.

[E-117] Q I understand that, yes.

Did you have any problem with people where it was a question of being on the line, about whether they lived in Richmond or whether they lived in the present boundary of the Chesterfield County, did you have any problems with people juggling addresses, that you had to search out? A At that particular time?

Q Yes. Or since then. A At that particular time, no.

Q Have you had it since then? A Yes, we have.

Q Would you tell us about that? A Well, I think one of the difficulties that we are running into with this particular moment in getting school opened is that we project enrollment based on student population and feeder schools. We find in some of our schools, Midlothian High School to be one in point, that the enrollment is higher, and that we, in filling out applications for the school, where they lived, that in fact they were Richmond children trying to come into Chesterfield County.

Q These are mostly white children, is that correct? [E-118] A That I do not know. I do not know.

Q In checking their addresses of these areas, are they generally white residences, in areas that used to be part of Chesterfield now so-called annexed area? A Well, it is from the annexed area. I am not sure, Mr. Lucas, if it is only from the annexed area. I do not know that answer.

Q Have you run into the situation where one or more people rented apartments within your district and given that address? A I believe that we have run into that.

[E-122] * * *

Cross Examination

By Mr. O'Brion:

Q Did Fairfax City have a separate school system? A Yes, and no.

[E-123] * * *

Fairfax City has a superintendent without schools and a school board without schools. Area four happened to take in Fairfax City so that I am more familiar with Fairfax City than the other area administrations.

Q So Fairfax City and Fairfax County educated their students together? A That is true.

Q And how many students were there in Fairfax City? A I do not know.

Q 10,000, would you say? A In Fairfax City?

Q City? A I just don't—you know, for some reason it wasn't one of the things that we ever needed to have, but

I would suspect from the size of the City that probably between—well, I just don't know. I would hate to give a ballpark figure.

Q I take it that the fact that you didn't [E-124] separate them in your mind means that they crossed lines to go to school, is that correct? A Yes, they did.

Q Was this by tuition arrangement? A I can't answer it, Mr. O'Brion, because again I was not in the system long enough to know the financial arrangements with Fairfax City. It was not part of my purview as an area administrator to get into that financial aspect. So I don't know.

Q That is satisfactory.

With regard to these administrative areas, did they encompass both the geographical area of Fairfax City and the geographical area of Fairfax County?

Did any of the— A All of Fairfax City was in area four.

Q Did any of the other areas include Fairfax County and Fairfax City together? A I do not believe so. I believe I held all of the children from the City.

[E-130] * * *

Q Carver High School has been a black high school in Chesterfield County as far as back as it was constructed, that is correct? A That is true.

Q And it was a black school in Chesterfield County in 1969 under freedom of choice? A That is true.

Q What sort of geographical area did Carver High School draw its students from? A I believe the County boundary lines.

Q Any black child in grades eight through twelve in Chesterfield County could go to Carver High School, is that correct? A Under freedom of choice, if they selected, yes, they could.

Q I believe under that freedom of choice plan, they could go to the nearest formerly all-white school, or they could go to the white school in their geographical area, or nearest formerly all-black school, is that correct? A Well, we did not have any all formerly [E-131] black high schools anywhere else in the County, but Carver, so the first part is true. The first part is true.

Q So for any black child in Chesterfield County, the nearest black high school to him was Carver? A That is true.

Q And were they provided bus transportation to Carver? A They were.

Q And did this matter where they lived in Chesterfield County? A It did not.

Q If you had a pocket of ten or so over near the Amelia County line, did they get transportation to Carver School? A If they selected Carver High School, yes.

Q And if they did not fill up a school bus, did they get transportation nonetheless? If there weren't enough of them in a particular area to get a full school bus? A Well, I don't have any reason to believe that they would not, but I don't have any statistics to say if there were 50 we would put 20 in a large bus, [E-132] but I would suspect—

Q They got transportation? A They got transportation.

[E-136] * * *

Q Did any of the construction projects which you have mentioned consider any possible assistance to the desegregation of parts of Chesterfield County? Did the location of the site use that consideration? A They did not.

Q Are you aware of a memo from Harry Elmore to all division superintendents dated May 17, 1968 in which he specifically directs all division superintendents to not make a site selection decision [E-137] unless they consider its effect on desegregation? A I am not aware of that at all.

Q At any rate, is it your testimony you did not consider race in the location of any of your buildings? A I considered overcrowded conditions in my consideration.

[E-140] * * *

Q I said if the State Board of Education had drawn a line around these three political subdivisions and made them a single school division, and if when you arrived down here you were the superintendent for that school division, and if when you got here there were 70 percent black Richmond schools surrounded by two 90 percent white County schools, would you have done anything about it, and if so, what?

* * *

The Witness: Yes, I would have to do something.

[E-141] * * *

Q Let me ask you this. Would you allow the 70 percent black system to remain? A If I felt that good education was taking place in the inner city and the children were getting adequate education, I would let it remain the same.

[E-142] Q And I assume that the opposite of that would be true if you felt like the black children in the 70 percent black system there were not getting the kind of education they should, you would do something about it? A I definitely would.

* * *

[F-4] PROCEEDINGS

(August 23, 1971) (Monday at 10 o'clok)

The Clerk: Civil Action 3353-R. Carolyn Bradley, et al., versus the School Board of the City of Richmond, Virginia, et al.

Continued from Friday.

The Court: Good morning, gentlemen.
All right, Mr. Lucas.

Mr. Lucas: Mr. Councill.

(Edward George Councill, III, resumed the stand and testified further on his oath as follows:)

Direct Examination

By Mr. Lucas:

Q Mr. Councill, once again for the record, would you state your full name and occupation? A My name is Edward George Councill, III. I am the Executive Director of the Richmond Regional Planning District Commission.

[F-11] * * *

Q Directing your attention now, sir, to a document entitled Housing in the Richmond Region and Revised Overview, July, 1970. Is this a document brought with you pursuant to the [F-12] subpoena last Friday? A Yes, it was.

Q And is this an official report of your agency? A Yes, it is.

Q Is it prepared in conjunction with any federal agency? A It is prepared as a prerequisite to receiving

Department of Housing and Urban Development financial assistance for our total program.

Q Directing your attention, sir, could you first of all just briefly describe what the report is? A The report is an effort to describe areas related to housing that the Commission would involve itself in in assuming work program in fiscal years.

It is supposed to identify areas that the Commission might want to study and to, of course, amass certain facts which relate to those areas.

[F-16] * * *

Q Directing your attention to page 34, I am sorry, page 33, would you begin with the last paragraph on page 33? A "Working against finding workable solutions to these and other social-cultural problems is the tendency of local governments, and citizens too, to view such problems as being intra-jurisdictional in nature and, therefore, none of their concern."

Q Go on to page 34, the next two paragraphs. A "Too often low volumes but significant increases in the rate of occurrences go unheeded as symptomatic of the 'regionalness' of such problems; crime, particularly thefts and [F-17] drug abuse, is just a case.

"Discriminatory practices, while being more difficult to discern, nonetheless contribute a major source of problems of a regional nature. Racially, the region consists of 30 percent nonwhites, most of which are black. All district jurisdictions except Henrico and Chesterfield Counties, have significant black populations. The four rural counties have from 36 percent to 84 percent black residents and the City's ratio exceeds 40 percent. The major results of such

practices are reflected in housing, employment, and educational opportunities. Historical residentially segregated housing patterns perpetuated by discriminatory real estate practices have combined to deny economic and educational opportunities available to whites as well as other nonwhite groups."

Q Mr. Councill, I asked you to furnish me, and you did, and produced here also, a copy of the report known as the Hahn Report. Can you describe first of all in some detail what that is? A The Hahn Commission was established in 1966 by the General Assembly to take a look at some of the critical problems facing what was supposed to have been base metropolitan areas.

Q Was there a report prepared and submitted to the [F-18] General Assembly and to the Governor? A Yes, it was.

Q And do you know when that was submitted? A November 15, 1967.

[F-19] * * *

Q Directing your attention, and I believe, sir, my copy and your copy do not have the same page numbers, so I will give you the section, under Roman numeral two, "The role of the state and local governments," the second paragraph beginning, "Two broad factors." Would you read that please?

* * *

A "Two broad factors contribute to the limited success of government in metropolitan Virginia. The first of these is the failure of the state to assume a more positive role in restructuring its political subdivisions and encouraging

them to work together on matters involving area-wide resources and needs.

[F-20] "The second is the inadequacy of local governments individually to meet area-wide problems. This inadequacy stems from limited jurisdiction, limited finances, and insufficient governmental cooperation."

Q And the following paragraph has a subheading, "The state," is that correct? A That is correct.

Q Okay. A "The state is sovereign and the political subdivisions such as counties and cities are creatures of the state created for the purpose of fulfilling a part of the state's responsibility to its citizens. The General Assembly within constitutional limitations may revise constitutional structure, abolish or create local governments, assign new functions or remove existing ones. Although this power rests in large part on legal precedent and historical tradition it exists also for practical reasons. The state has the geographic social base to make broad policy decisions effective."

Q The first paragraph. A "In Virginia this role of the state has been clearly demonstrated in public health, highways, and in increasing welfare and education. In each case the General Assembly has established meaningful planning coordination and performance standards for local governments and state agencies. [F-21] In general such programs are administered by local governments individually or in combination. To the extent this approach has been used it has achieved greater success and more effective programs than possible by either the state or the localities individually."

Q Would you skip the following paragraph and read beginning with, "As a result of these deficiencies." A "As

a result of these deficiencies in state leadership serious problems have developed in the metropolitan areas. Key programs requiring new governmental structures and positive action are left to local initiative. Too frequently inaction results. Since the creation of a fault is always more expensive than prevention increased costs to the taxpayer develop. Perhaps even more serious are the growing problems of the core cities and the inevitable spread of some of these problems to the suburbs."

Q Directing your attention to the section entitled, "Increased Responsibilities," would you read the first paragraph?

[F-22] * * *

[The Witness:] "During the past decades a trend has developed in the partial or total transfer of responsibility for and control of some functions of local government to the state. These include the administration of public health, the county road and highway systems, and the financing of education and welfare."

[F-29] * * *

Cross Examination

By Mr. Byrne:

Q All right, sir.

In reference to page 10 on housing pattern. You say that a racially segregated housing pattern in the Richmond area was reported in November, 1969. What are the factors that led to that conclusion? The factors considered by you in preparing this report? A When this was written the staff had ample access to numerous documentation of what is now, I am sure, accepted as a fact that lending and in-

suring practices on behalf of the then Federal Housing Administration and through its post World War II loans, and VA, was a major factor, if not the major factor, leading to what are now racially identifiable residential neighborhoods.

Q All right, sir.

[F-30] Would you state any other factors that led you to that conclusion? A There are a number of other factors that both further study on the part of my staff and on the part of other interested agencies across the country found out. Obviously low income families of any race would be limited in today's housing market by the economics of today's housing market.

I think this is probably the most important factor related to keeping poor people's housing opportunities limited.

A number of other factors that deal with one's limiting one's own housing opportunities with regard to location would be one's personal habits, associations, both with other people and with institutions such as churches. That would result in a preference which would limit the full range of selecting housing within any location in a metropolitan area, for example.

Q Have you made any recent studies with reference to preference as it pertains or may or may not pertain to the black population of the City of Richmond? A We did make one study. I don't know how recent it was. I think it was back in '64 or 5, in which we examined the relocation of, I think, some 1,300 families that were displaced by the 17th Street urban renewal project. One of the [F-31] conclusions of that study was that preference played a major part in the relocation pattern of those displacees, and the findings of going through the Richmond Redevelopment

Housing Authority's own records indicated that those displacees tended to locate on the fringes of the neighborhood from which they were displaced.

Q Did your study disclose any reasons for that? A Yes. There were a number of interviews that were then required by the federal people of the Richmond Redevelopment and Housing Authority as to this very question, and a number of things were cited that I just mentioned. Convenience, for one thing. Interviews pointed out that people didn't like to move great distances. Past associations with friends and neighbors, past associations with firms, retail establishments, churches, schools, all of these played a part in the relocation preferences of people who chose not to go into public housing.

[F-35] * * *

Q Now, sir, dealing with the segregated housing patterns, did you take into consideration the zoning and its administration in those localities in determinning your opinion with reference to that statement? A After this paragraph was written the Commission chose to insert into its work program a study of zoning to see if in the public sector there were racial motivations connected with administration of zoning ordinances.

Q Has that study been completed? A The study has been completed. It is being written. The mechanics of the study have been completed, but there is no written document that is yet coming before the Planning Commission.

Q Have you reviewed what has been done up to this time? A I have been kept abreast of the progress, yes, sir.

Q All right.

Does that study have any opinion as to the administration of zoning ordinances in this area? A It has a major opinion.

Q Tell us what that is. A It has found that in the jurisdiction which makes [F-36] up the standard metropolitan area, Richmond, Henrico, and Chesterfield and Hanover, no evidence to support discriminatory zoning practices whatsoever.

Q In all four jurisdictions? A All four jurisdictions studied.

Q Now, sir, directing your attention to what has been referred to here as the Hahn Report. The first eighteen and a half pages of the Hahn Report deal with alternatives in studying the question as proposed by the legislature, is that correct? A That is correct.

Q All right, sir.

Will you turn back to page 17 just a moment? Mr. Lucas had you read the section beginning, "Increased State Responsibilities." A All right, sir. Yes, number 16 in my report.

Q All right, sir.

Would you go up two paragraphs above that where you have got the words "While the elimination—" A Yes, sir.

Q Read that, please. A "While the elimination of city-county separation has some appeal, such a step would appear to create more problems than it would solve. All of Virginia's [F-37] metropolitan areas except Roanoke contain more than two counties or cities. Such metropolitan areas, the elimination of city-county separation, would provide no basis for an area-wide approach to metropolitan problems."

Q All right, sir.

The Hahn Commission's recommendations are contained, the recommendations to the legislature, are contained on paragraph—page 19 through 32, is that correct, or 19 through 31? I don't have yours, but this is the section that begins "recommendations," and ending with "just prior to proposed legislation." A I have 18 through 27.

Q And they are summarized in the next group or, next five pages, or in the exhibit before the Court, pages 34 through 39, is that correct? A Yes, sir.

Q All right, sir.

Now, did the Hahn Report contain a dissent? A Yes, it did.

Q And is that found in the exhibit beginning at page 40 through 43? A Yes, sir. My page is 38 through 40.

Q Now, what did the legislature adopt in principal, the majority or the dissent? [F-38] A I would say almost to a letter they adopted the dissent rather than the majority report.

[F-40] * * *

Recross Examination

By Mr. Gray:

[F-41] Q Mr. Councill, would you turn to that consolidation plan which Mr. Lucas had you read a sentence from, and read the whole thing into the record?

The Court: Is this Mr. Parkerson's dissent?

Mr. Gray: Yes. The paragraph.

The Witness: "I concur with the recommended changes in the consolidation statutes except for the recommendation

that the state initiate a referendum. I recommend that the consolidation referenda be initiated by each jurisdiction affected and voted upon separately by the qualified voters of each jurisdiction, in each affected jurisdiction, as is now the law. If neither of the governmental bodies, nor the people themselves initiate a referendum it is self evident that a favorable climate does not exist for consolidation."

Q Now, sir, I ask you, is this consolidation that is being referred to here a consolidation of school divisions or the total government of the localities? A The total government of the localities.

Q I ask you, sir, does the Hahn Report address itself to the problem of public education in Virginia? A Not to my knowledge at all, sir.

[F-49]

* * *

WOODROW WILKERSON

was called as a witness and, having been first duly sworn, was examined and testified on [F-50] his oath as follows:

Direct Examination

By Mr. Lucas:

Q State your full name and occupation, please. A Woodrow Wilkerson, Superintendent of Public Instruction, State of Virginia.

Q How long have you held that position? A Approximately 11 years.

Q And how long have you been with the department over-all? A Since 1945.

[F-67] * * *

Q Would you turn now to page 198, sir. This page of the minutes under the heading "Approval of employment of a superintendent by two school divisions" makes reference to Section 22-30 of the Code of Virginia as amended in the 1971 session, is that correct? A Yes, sir.

Q That section authorizes the State Board of Education to divide the state into school divisions, did it not? A Yes, sir. Subject to criteria and conditions.

Q That is prescribed by the General Assembly, is that right? A Yes, sir.

Q Did the State Board actually divide the State of Virginia into school districts? A Yes, sir.

Q And when was that done? A This was at the June meeting, I think.

Q June, 1971? A 1971.

Q And did the Board give any consideration, or let me, before we go to that, does the Board have the authority to [F-68] approve, say, a single superintendent for two school divisions which wish to operate under one superintendent? A If two school divisions wish to employ the same individual?

Q Right. A Then that individual, the conditions of his employment, are subject to approval by the State Board of Education.

Q But you pay part of the salary, is that right? A Yes, sir.

Q And he is considered a part-time superintendent for each, as in terms of financial relationship? A Yes.

Q And if two school systems wish to operate as one system requires the approval of the State Board of Education, is that correct? A If two—if two school—

Q Districts? A Systems?

Q Yes. A Wish to become one?

Q Wish to operate as one by contract or consolidation or any other method, it requires the approval of the State Board? [F-69] A I am not fully certain on one point. If we have two school divisions operating under a local agreement, which agreement is subject to be approved under a statute of the General Assembly—

Q But it must be approved by the State Board, that is what the statute requires is that that contract must be approved or must be approved by the legislature itself? A The statute I am thinking of requires the state, I am thinking of has to do with the updating and approval of an agreement entered into by two school divisions that I have in mind.

Q You mentioned them. A I can refer to the statute if I have a copy of it.

Q Do you recall the school division? A Yes, sir.

Q Which are they? A Williamsburg City and James City County.

Q Do they operate as one school division? A They operate on an agreement entered into by the two school boards within the two governing bodies.

Q All right.

Would you read at page 198 the divisions that have appointed a single superintendent to serve both systems? [F-70] A Yes, sir.

"The following divisions have appointed a superintendent under the Code Section cited above:

"Essex-Middlesex Counties.
"Grayson County-Town of Fries.
"Greene-Madison Counties.
"Greensville County-Emporia City.
"Halifax County-South Boston City.
"James City County-Williamsburg City.
"King William County-Town of West Point.
"Rappahannock-Warren Counties.
"Westmoreland County-Town of Colonial Beach.
"York County-Town of Poquoson.
"Northampton County-Town of Cape Charles."

Q And was this the employment of this superintendent for each of these districts approved by the Board? A Approved by the Board as part-time superintendent in each.

Q Page 199 refers, sir, to the establishment of joint schools. Refers also to a particular section of the Code of Virginia, 22.7. Would you list the school divisions cooperating to form joint schools as reflected in the minutes of page 199? A Right.

[F-71] The listing of schools operated jointly. First do you want Dowell J. Howard Vocational School serving three school divisions?

Q Would you name them? A Clarke County, Frederick County, Winchester City.

Second, Valley Vocational Technical Center serving Augusta County, Staunton City, Waynesboro City.

Third, Virginia Peninsula Vocational Technical Education Center serving Hampton City, Newport News City, York County.

Fourth, Massanutten Vocational Technical Center serving Harrisonburg City and Rockingham County.

Five, Allegheny County, Clifton Forge, Covington Vocational Center serving Allegheny County, Clifton Forge City and Covington City.

Q Covington City and Allegheny County operate a joint system? They have two school boards but only one superintendent in that area at one time? A I am sorry. I missed the first part of that question.

Q Allegheny County, Covington City, did they operate a school system jointly? A At one time Covington City was a part of the over-all school system, and I think for a period of time there [F-72] was, I think there was one superintendent working with the two school boards.

Q And the statute in question calls for the approval of the State Board and says that these districts may operate jointly a particular school or schools only with the approval of the State Board, is that correct? A Right.

Q Was this approved by the State Board? A These arrangements for these schools as I have read were approved by the State Board of Education.

Q I direct your attention to Plaintiff's Exhibit 109, enrollment at all-black regional schools for the period 1940 to 1968.

[F-73] * * *

Q '45. You are familiar with the regional schools for blacks, aren't you, sir? A In general.

Q Generally speaking the areas of counties that had relatively small numbers of black high school students

would band together and set up a high school in one county or another from which blacks could be transported from the respective counties to this school, is that right? A This is true in the case of these schools listed here.

Q Sometimes you even built dormitories at the schools for blacks on the high school level because they were taken such long distances, is that correct? A I couldn't speak to that as to dormitory facilities. The State Board did not build dormitory facilities.

Q Were there dormitory facilities at those schools? A I think so.

Q The minutes of the State Board, if they reflected [F-74] that, would be consistent with your recollection, is that right? A If the minutes so reflect that would be it.

Q And these schools were continued until 1968, according to this exhibit, is that your understanding? A One or more have closed shortly before that date, but I think the outside date for the whole group was '68.

Q Would you list the counties and the name of the school involved? A Yes, sir.

For Montgomery County, Pulaski County, Radford City the Christiansburg Industrial Institute.

Culpeper County, Madison County, Orange County, Rappahannock County, Carver Regional High School.

Albemarle County and Charlottesville City, Jackson P. Burley High School.

Fairfax County, Fauquier County, Prince William County, Rappahannock County, Manassas Regional High School.

Q And these students were transported by a school

bus to these schools, is that correct? A That is my understanding.

Q State aid provided for the transportation, did it not? [F-75] A Insofar as I know there was—

Q Under the appropriate state formula? A If the busses met the requirements, the regulations of the State Board.

* * *

Q The State Board had to approve this arrangement for the operation of these schools, did it not? A Yes, sir.

[F-84] * * *

Q With specific reference to construction I direct your attention to Superintendent's Memo 3400, dated May 21, 1957, which make reference to the reporting survey of needs and ask you if it contains a designation of separate copies of submissions for white and Negro schools?

[F-85] I believe it appears on the first page and is marked, sir, if that will help you.

Does it show copies? A Three separate sheets for reporting survey of needs are being sent to you as follows:

Q What does it say? A "White copy for white schools; pink copy for Negro schools; yellow copy for summary."

Q Thank you, sir.

You were Superintendent, State Department of Education, in May, 1968, were you not? A Yes.

Q In May, 1968, the State Department of Education sent a directive to all Division Superintendents calling their attention to the requirement of recent Federal Court deci-

sions placing an affirmative obligation upon local school officials to eliminate dual school systems through the location and construction of schools. Do you recall that, sir? A Yes, sir.

Q And what was the purpose of sending that memorandum out in terms of policy of the department? A The purpose was to bring to the attention of local school administrators the basic information and/or excerpts as included in a directory or letter which we had [F-86] received from the Director of the Civil Rights Office, I think.

Q Did the state department thereafter, at least thereafter, consider this criteria in evaluation of school construction programs and individual school applications for loans or for approval under any particular authority? A The determination as to approval on literary loans was made by the State Board in terms of its best judgment as to the needs, financial needs, and relationship with the total amount requested to monies available.

Q Did it include a consideration of this factor as communicated by you or by the State Board of Education on May 17, 1968? A I can't recall specifically that was considered in connection with the approval of the literary loans.

Q Was it considered in connection with the approval of any construction plans? A By law.

Q By policy, sir? A Well, as I was about to say, if I may, that the school building plans must be approved in accordance with the State Board regulations. I don't recall in fact there was no such regulation a part of it.

Q You did not make such a regulation after you [F-87]

communicated this requirement to the Division Superintendents? A There was no regulation.

Q Was there any consideration of it as a matter of the general duties of supervising public education in the State of Virginia? A The basic consideration there was that school construction is a responsibility of the local school authorities and the responsibility ran from the school authorities to comply with such a provision with advice and help of the State Department of Education.

Q Is one of the mandates of the state department to see to it that the state runs an efficient school system, localities run an efficient school system? A Yes.

Q Okay.

I don't mean to wait you out, but we have to have the spoken word for the reporter.

Is it an efficient school system to locate the public school in a building which reinforces the dual school system as established under state law in Virginia? Is that an efficient school system? A Again the responsibility for the location of schools rests at the local level.

Q Didn't you just read something that called for [F-88] site approval, location in the community, location on the site of the State Board? Wasn't that a part of its function? A I just—I read the excerpts there. The present provision —a locality must submit its plans and specifications for approval, the regulations or requirements of the State Board apply to a site which is selected locally, just as the regulations apply to the construction itself.

Q Did you adopt any new regulations? Did you do anything else to communicate a policy other than sending

out this memo? A I don't recall anything other than through discussions, the written memo, advice.

Q And after sending this out it played no part in your consideration or evaluation of school construction programs in the State of Virginia, is that right? A That was not a part of the State Board regulations.

Q Was not part of your policy or practice, was it? A Again the location of schools is determined locally.

[F-92] * * *

Q Dr. Wilkerson, are you familiar with the state tuition grant program? A State tuition grant program in a general way has existed for a period of time.

[F-93] Q Would you describe it, please? A In general terms it was a program which provided financial assistance for students who wished to attend a private nonsectarian school or another public school, or a public school other than that to which he would normally go.

May I add very quickly that this again was administered by a staff member, and I can't recall all the specifics of that at the time it was in operation.

Q Were one of the criterion, sir, if a person wanted to avoid going to the school which had become integrated?

The Court: I am sorry. I didn't understand the question, Mr. Lucas.

By Mr. Lucas:

Q Was one of the criterion for the award of a tuition grant that would make you eligible for an award a desire not to attend a school which was going to be desegregated?

A I don't recall that being a condition or criterion which a child had to meet.

Q Do you recall when the tuition grant program was inaugurated? A Not precisely.

Q Does it refresh your recollection to tell you [F-94] that it was in conjunction with the 1956 special session of the legislature? A Yes, sir.

Q I direct your attention to Superintendent's Memorandum Number 3567, dated September 5, 1968, to Division Superintendents, regulations governing tuition grants.

The cover states, "I am enclosing a copy of the regulations governing tuition grants as adopted by the State Board of Education at a special meeting held for this purpose on August 29, 1958."

Would you read the availability of tuition grants to the second page, please, read the title and then the availability?

A "Regulations governing tuition grants adopted by the State Board of Education, August 29, 1958. Availability of tuition grants. Tuition grants will be available for pupils under the following conditions.

"One, when all schools in a county, city, or town are closed and not reopened by operation of law or by order of the Governor."

Q Do you recall to what circumstance the order of the Governor section there refers to, Doctor? A I don't feel that I can speak to that.

Q Do you recall whether or not this was in [F-95] connection with acts of the legislature which authorized the Governor to close schools if they were under an order to integrate? A It had to do with acts of the General Assembly.

Q Do you recall the Governor closing six schools in the City of Norfolk because they were under a Federal Court order to desegregate to admit Negro children to those six schools? A I recall that there were schools closed. The circumstances as of this moment I do not.

Q You were in the State Department of Education in what position in 1956, Doctor? A Either secondary or teacher education. Secondary education. I think.

Q Director of that field? A No, sir.

Q What position did you hold? A If my date is right that would have been as supervisor.

Q All right, sir. A Of secondary education.

Q Where were your offices located? Richmond? A Yes, sir.

Q That is the capital of the state, isn't it? [F-96] A Yes.

Q And you were not aware of the order of the Governor closing public schools because of a Federal Court order integrating those schools? A I do not recall at this time how or who closed the schools.

Q Do you remember they were closed for that reason then? You said you don't recall how. Do you recall that schools were closed because they were to be integrated? A I recall that they were closed at a time of the concern over the problems relating to desegregation.

Q Thank you, sir.

Now, would you read the second criteria? A "Two, when one or more schools or parts thereof in a county, city, or town, are closed and not reopened by operation of law or by order of the Governor."

Q The third one. A "Three, when a child or children are assigned to or are in attendance at public schools wherein both white and colored children are enrolled and the parents of such child or children object to the assignment of such child or children and/or attendance at any school wherein both white and colored children are enrolled."

Q Does that help you understand the first two, [F-97] Doctor? Does that refresh your recollection as to the purpose of the tuition grants? A I don't recall that there was a criterion as to the administration of that program on this point.

Q You do have that criterion in front of you and it says it was adopted by the State Board, doesn't it? A In 1958, yes, sir, prior to me being in this office.

Q Therefore it would have been a criterion for those tuition grants, would it not? A Under the following conditions, yes, sir.

Q All right, sir.

Would you list the next condition, if any? A "Four, under the direction of the Governor in the discharge of the responsibilities imposed upon him by law."

Q Thank you.

How long did the tuition grant program continue? A I don't recall precisely.

Q Would it refresh your recollection if I tell you that there was a memorandum issued to all Division Superintendents advising that the legislature had not appropriated any new funds in 1970 of the tuition grant program? [F-98] A I don't recall that particular memo.

Q Do you recall a memo to that effect, sir? A I think

that must have reference to special assistance for handicapped children if it were 1970.

Q When did the tuition grant program end? Do you know? A I cannot recall when the tuition grant—the general tuition grant program was. I can't recall. It was in the 1960's.

Q Do you recall, sir, the programs, the state scholarship program? Are you familiar with that? A For teachers?

Q Teachers and students both. Isn't there a separate state scholarship program? A There is a special education scholarship for students having certain handicapping conditions.

Q Didn't Virginia at one time, sir, provide for scholarships for black children who, because of state policy, could not be admitted to state institutions of higher learning, but the state would pay a scholarship for them to go to school out of the State of Virginia? A It seems to me there was some type of assistance to aid a student, a black student, in pursuing his studies elsewhere. The conditions I can't recall.

[F-99] Q I show you Superintendent's Memo Number 4706 to Division Superintendents from Woodrow W. Wilkerson, Superintendent of Public Instruction, dated October 6, 1965. Subject: Legal Interpretation with Respect to Use of Pupil Scholarship Funds. I ask you to read it and to see if this in any way refreshes your recollection? A The entire memo?

Q Just read it to yourself, sir, and see if it refreshes your recollection about those? A Yes, sir.

Q Does that refresh your memory, sir? A In general.

Again this whole program was administered by a member of my staff and I can't get into the specifics of how it was handled.

Q Are you familiar with an extra session of the General Assembly in 1959 that adopted the pupil scholarship funds to be effective in 1959-'60 school year? A I am assuming they are the tuition grants.

Q It says "pupils' scholarship." The earlier memo was dated 1958 setting up the rules and regulations for previously adopted program, tuition grants? A Yes, sir.

Q I direct your attention to Superintendent's Memo 3713, dated August 19, 1959, and ask you to read from it [F-100] the regulations adopted by the State Board of Education on August 14, 1959.

Read it out loud, please. A "This memo, dated August 19, 1959. Because of the increase in concern expressed in regard to undesirable practices that may be expressed in the transfer of pupils under the pupils' scholarship plan from the school boards of one locality to the public schools of another locality, the State Board of Education on August 14, 1959, adopted the following resolution: Whereas the General Assembly of Virginia in extra session 1959 provided for pupil scholarships for the 1959-'60 school year; and whereas the State Board of Education on June 25, 1959, in accordance with law established rules and regulations governing these pupil scholarships; and whereas pupils under the statutes and regulations are enabled to attend either private, nonsectarian schools or public schools other than those in the county, city, or town in which they reside, and; whereas the nature and degree of transfer in attendance of pupils from the public schools of one locality to those of another can occasion an undue hardship to the

operation of the public school so affected; and whereas the exchange of students between public school systems on the long-recognized tuition basis is still effective and desirable, be it resolved that the school boards and Division [F-101] Superintendent of Schools of the sending and receiving localities confer on this matter and reach such understanding as will give priority to the transfer of students on the well-established tuition plan which has been in effect for many years and thereby maintain the integrity of this practice with due regard to the intent of the statutes governing the pupil scholarship program."

That is the end of the action or the resolve of the State Board.

Q The provisions memo number 4706 was dated October 6, 1965, and it indicates a modification of your scholarship practice as a result of a Federal Court order, does it not? A Yes, sir.

Q I am sorry. I took it back from you, sir. A Yes, sir.

Q Is that your recollection from reading it? A Yes, sir.

Q Does that indicate to you, sir, that the practice continued at least until October, 1965? A Yes, sir.

Q You were with the State Department of Education in 1956 when the Pupil Placement Board was adopted, were you not? [F-102] A Yes, sir.

Q The State Board of Education was in active concert in the operation of the pupil placement system with the local school boards and the Pupil Placement Board, wasn't it? A I don't believe I quite understood.

Q The State Board of Education acted with the Pupil

Placement Board to operate the system? A The pupil placement system?

Q That's right. A No, sir.

Q I direct your attention to Plaintiffs' Exhibit 118, sir, which is the Chesterfield County School Board minutes, and ask you to examine page 95, as they are marked at the bottom of the page.

[F-105] * * *

[Mr. Lucas:] Would you look at that now, sir?

The Witness: Yes, sir.

By Mr. Lucas:

Q It says, "On motion of Mr. Wells, seconded by Mr. Eagles the Board directed that the following telegram received by the Superintendent of Schools be incorporated in these minutes."

Would you read that telegram, sir, and then the following communication, which is Superintendent's Memo Number 3360? A "The 1956, December 29 a.m. 11 o'clock, Fred D. Thompson, Chesterfield, Colonial Heights, County of Chesterfield, Virginia. Under the provisions of Chapter 70, Acts of Assembly, extra session of 1956 effective December 29, 1956, [F-106] the power of enrollment or placement of pupils in all public schools of Virginia is vested in the Pupil Placement Board. The local school board, Division Superintendents, are divested of all such powers. Within a reasonable time you will be furnished a supply of applicable forms, placement forms," I am sorry, "a supply of application forms, placement forms, and such other forms and instructions as may be necessary for the proper administration of the act.

"In the interim and pending official placement by the Pupil Placement Board under the terms of said statute and such regulations as may be promulgated the pupils who may be entitled to be placed in a school under Section 4 of said act may, in the discretion of the school board and Division Superintendent, and in conformity with your practices, be permitted to attend a school on a temporary basis subject to placement by this board. You will please make appropriate distribution and publication of this notice. Pupil Placement Board of the Commonwealth of Virginia, Room Number 3, State Capitol Building."

Q And the next item, sir? A Next item?

Q On motion of Mr. Eagles. A "On motion of Mr. Eagles, seconded by Mr. Crump, the board directed that Superintendent's Memo 3360 be [F-107] incorporated in these minutes."

Q Would you read that memo, please? Give us the date. A Superintendent's Memo Number 3360, dated January 11, 1957, "To Division Superintendents, From Dowell J. Howard, Superintendent of Public Instruction. Subject: Communication From the Pupil Placement Board. The Pupil Placement Board of Virginia has requested us to transmit the following communications to you for your information and guidance. This is 'application forms which will enable the Virginia Pupil Placement Board to implement and peform its function presently in the process of being prepared and will be dispatched to all local school boards within two weeks.

"The local school boards will be requested to see that these forms are completed in accordance with a letter of instruction which will accompany the forms and properly

return them with the comments and recommendations to the board.

"Until these forms have been completed, returned, and acted upon, the procedure will continue to be that outlined by the board in its communication of December 29, 1956, to all local school boards whereby pupils were permitted to attend classes on a purely [F-108] temporary basis in conformity with existing practices.

"It is the intention of the Pupil Placement Board to request the assistance and cooperation of local officials of the political subdivisions of the state in securing the information required on the application forms and to have the same forwarded to this board for final action."

Q Thank you, sir.

How long did the Pupil Placement Board continue in existence in the State of Virginia? A I don't remember the exact date, when it was terminated.

Q Approximately. A I don't remember it. I would say the early '60's, I could be off.

Q I show you Superintendent's Memo 3931, dated February 14, 1961. Tell me who that memo is from, to whom it is addressed? A It is dated February 14, 1961 to Division Superintendents from Harry R. Elmore, Assistant Superintendent of Public Instruction. Subject: Regulation Regarding Placement of Pupils.

Q What is the regulation? A Beg your pardon?

[F-109] Q Does it say—would you read us the regulation that it distributes? A "State Board of Education at its meeting on February 3, 1961, promulgated rules and regulations to be used and applied to, by school boards in their respective jurisdictions in making placement of pupils

in schools pursuant to Article 1.2 of Chapter 12 of Title 22 of the Code of Virginia, 1950 as amended and codified as Sections 22-232.18 through 22-232.31.

"Superintendent of Public Instruction has been directed to transmit copies of those regulations to the school boards of the various counties, cities, and towns of the Commonwealth upon request therefor by the Division Superintendent of Schools of such counties, cities, or towns. Upon receipt of written request copies of the regulations will be mailed as directed by the State Board of Education."

Q Does that indicate to you the close cooperation and administration between the State Department of Education and the Pupil Placement Board? A This was, if my memory is correct, this was pursuant to Article 1.2 of Chapter 12 for those localities electing not to be bound by Article 1.1 and wished to be bound by criteria of the State Board.

[F-110] Q And what was the criteria of the State Board and can you explain to us the difference between the two?

You seemed to know the numbers very well. Perhaps you could tell us what the differences were. A I can't recall the requirements of the Pupil Placement Board. The State Board in fulfillment of that requirement under Article 1.2 did devise, obviously, certain criteria for the use by localities in the placement of students. I don't have that memo with me, or the action of the Board.

Q Tell us generally what it did, what criteria did it prescribe for local districts? A I can't recall the specific conditions or guides or criteria set up by the State Board, and I don't have a copy with me, I don't think.

Mr. Lucas: Can that copy be made available to us, Your Honor?

The Court: Yes. Would you do that?

The Witness: Yes.

By Mr. Lucas:

Q Directing your attention, sir, to the period immediately following the Supreme Court's decision in Brown versus Board of Education, can you tell me what actions the State Board took at that time to operate or to advise school [F-111] boards as to the manner of operating public schools in Virginia? A I don't think I understand the question, Mr. Lucas.

Q Well, the Supreme Court of the United States ruled in Brown versus Board of Education with respect to school segregation. My question to you is what actions, if any, did the State Board take communicating with local boards directing them as to their manner of operation in response to that? And I am speaking of the period immediately after the decision. A I can't recall the specific actions of the Board.

Q Directing your attention to Superintendent's Memo Number 3025, dated May 28, 1956, [sic] to Division Superintendents and chairmen of local school boards from the Superintendent of Public Instruction. Would you read just the first page, please, sir? A "Commonwealth of Virginia, State Board of Education, Richmond, Superintendent's Memo Number 3025, May 28, 1954, to Division Superintendents and chairmen of local school boards from Dowell J. Howard, Superintendent of Public Instruction."

Q Excuse me. Can you slow down a little? This [F-112] gentleman has to take it down. A Excuse me.

"Subject: Ruling of Attorney General of Virginia, Opinion of the Supreme Court of the United States.

"I am enclosing a copy of an opinion rendered by the Attorney General in reply to an inquiry propounded to him by the State Board of Education at its meeting Thursday, May 27, 1954. I also quote below the actions of the State Board of Education following receipt of the opinion. 'In view of the opinion of the Attorney General on this day rendered to which we adhere the Board proclaims the following policy, the local boards of education are hereby advised to proceed as at present, and for the school session 1954-'55 to operate the public schools of this state on the same basis as they are now being operated and as heretofore obtained.' "

Q Is it your understanding that more or less told them to continue to operate under the law of Virginia which at that time required segregation? A To operate on the same basis as they were at that time, which was in accordance with the state law.

Q And state law required segregation at that time? A Yes, sir.

[F-113] * * *

Q Directing your attention to Superintendent's Memo Number 3038, dated July 6, 1954, to Division Superintendents from the then Superintendent of Public Instruction. Would you read the paragraph, first paragraph, and the paragraph that I have marked? A First paragraph, "I am quite sure you fully recognize that I share your concern for the recent Supreme Court decisions. I have made few public statements and feel it inappropriate to comment publicly at this time regarding my opinion of the

merits or demerits of plans proposed by others. You may rest assured, however, that proposals made are being studied carefully and will be given every consideration at the proper time."

Q Then the paragraph at the bottom that is marked, [F-114] please, sir. A "The responsibility of my office is to administer our program of public education in keeping with policies of the State Board of Education and in compliance with Virginia's constitutional and statutory provisions. In doing so I shall keep in close touch with our local Division Superintendents of Schools who have a grave responsibility on the local level. Their advice and counsel is of inestimable value and will be sought continuously. Their concern must continually be my concern."

Q What are the Granville P. Meade scholarships? A They are scholarships provided under the will of the late Granville P. Meade to assist certain young people in obtaining a college education.

Q In fact they are restricted to worthy white male students born in Virginia and residents in Virginia to attend Virginia colleges, is that true? A That is correct, yes, sir.

Q And how long has the state been administering this particular scholarship fund? A I think since approximately 1950. '49 or '50. I should add the matter is now in litigation. It has not been administered during this past year.

Q And it was administered on that basis as late [F-115] as the previous school year, is that correct? A I think so. '70-'71 or '69-'70.

Q I have here, sir, a letter of the Chesterfield County Public Schools with reference to the addition to Carver High School from the then Superintendent addressed to Mr. Arthur Chapman, Supervisor of School Buildings, State Department of Education. I ask you to look at that in connection with your testimony about the period of time wherein the submissions for school constructions indicated the race of the children for which the school is intended.

If I may show counsel.

The Court: Yes.

All right, Mr. Lucas.

By Mr. Lucas:

Q The letter is captioned "Project Chesterfield 42-B Addition to Carver High School." I call your attention to the second to the last paragraph and ask you if you will read it, please, sir?

Mr. Gravatt: Give us the page.

Mr. Lucas: I am sorry. I thought I had earlier. The date of the letter is September 8, 1965.

The Witness: Next to the last?

By Mr. Lucas:

Q Yes. [F-116] A "I feel that although not substantiated by past data as a result of relatively recently inaugurated federal legislation a leveling off, if not decline, in enrollment in this all-Negro high school will be experienced. A new library and conversion of the existing facilities into two classrooms would be in order if the next two years proves our judgment incorrect. Present library space and acreage would not be a serious detriment in the meantime."

[F-118] * * *

Q So that would include Title 1 and things of that sort? A Yes, sir.

[F-121] * * *

Q Doctor, we were trying to determine the date that the tuition grant fund or pupil scholarship fund terminated. I have here Superintendent's Memo Number 5819, dated July 3, 1970. I ask you if you could tell me if it indicates the date of termination? A It indicates the date of termination.

Q What is that date, sir? A June 30, 1970.

* * *

Q Has the State Board of Education, Doctor, approved transportation of students across state lines for purposes of attending public school on a tuition-paid basis? [F-122] A We understand that there have been employment arrangements made at the local level on a cooperative basis for students to attend other schools. I don't think I understood the question fully and I am sorry.

Q Perhaps this will be of some assitance, Plaintiffs' Exhibit 110 which is a table taken from the replies by local school boards to the State Board of Education, Superintendent Memorandum 60419 which I believe made an inquiry as to that data. It covers the period 1954-'55 through 1970-'71. If you could indicate the sending county and the receiving locality, I believe it does indicate one or more instances where it is for handicapped children, if you will just look through that and identify those, please.

The first one is Arlington, isn't it? A The first one I have is Accomac.

Q The first one showing a receiving school and state on that chart is Arlington, isn't it? A Let's see. Yes, sir, right.

Q From Arlington to Washington, D. C., private school for the handicapped, is that correct? A- Yes, sir.

Q And Carroll County is the next one shown. Would you give us the Carroll County and the race of the children and schools to which they are assigned? [F-123] A Carroll County, a total of 282.

Q W stands for white? A White. Receiving school and state, Mount Airy High School, Mount Airy North Carolina. 128 white, North Surry High School, Dobson, North Carolina, one white.

Rockford School, Mount Airy, Mount Airy North Carolina.

Three black, Ridgeview High School, Hickory, North Carolina.

One white Beulah School, Mount Airy, North Carolina.

Two white, Franklin School, Mount Airy, North Carolina.

Q Fairfax on the second page shows 817. I tell you the legend RU indicates race unknown. That is, it wasn't shown on the data. It does not show the receiving school, but it does show 817 students transferring, does it not? A Yes, sir.

Q And Giles County? A Giles County shows one black, receiving school and state, Park Central High School, Bluefield, West Virginia.

Q Halifax? A Halifax 513 Indians, High Plains High School, Woodsdale, North Carolina.

[F-124] Q Page three? A Let's see. Loudoun County three whites, St. Joan's High School, Washington, D. C., and eight whites Benedictine School, Ridgely, Maryland.

Q Patrick County? A Patrick 14 blacks, Mount Airy City Schools, Mount Airy, North Carolina.

One white Mount Airy City Schools, Mount Airy, North Carolina.

Q Page four, Russell County? A One black Swift Memorial High School, Rogersville, Tennessee.

Q Scott County? A 139 black Douglas School, Kingsport, Tennessee.

Q Tazewell? A Tazewell, 60 black, Excelsior High School, McDonald County, West Virginia.

Q Wise? A Wise, 28 black, Kingsport, Tennessee. Doesn't show the school.

[F-127] * * *

Cross-Examination

By Mr. Little:

[F-128] Q Dr. Wilkerson, to go back first to the regional schools for blacks that Mr. Lucas asked you some questions about. Is it not true that all of these schools were established with the approval and consent of the State Board of Education? A I don't remember the records on the actual establishment of those schools, but—

Q Well, Doctor, would you like to go through these then with Carver, let's look at School Board Exhibit 82 at page two, please, sir.

Carver Regional High School located in Rapidan serving Culpeper, Madison, Orange, and Rappahannock County. Would you look at School Board Exhibit 82, page two?

I realize that was done long before you were with the board, and I would like you to look at the heading, "Regional Negro High School for Orange, Madison, Greene, Rappahannock, and Culpeper Counties." A Yes, sir.

[F-129] * * *

[Q] I believe, Doctor, just to save time, you weren't with the Board at the time, but the paragraph will speak for itself. That is where the State Board gave tentative approval to the establishment of Carver School, I mean Carver, beg your pardon, that's right. Carver Regional High School. A That's right.

Q Then if you go over again to page three in the same exhibit you will see appropriation for regional Negro high school for Orange, Madison, Greene, Rappahannock, and Culpeper County? A Yes, sir.

[F-130] Q Now, with reference to the Jackson P. Burley School, which served Charlottesville and Albemarle, would you turn to the same exhibit on page 11, and again the number is at the bottom of the page.

In that did not the Board approve the plan for the establishment and operation of a joint school for Negroes in accordance with rules and regulations for such school adopted by the State Board on such and such a date? A Yes, sir.

Q All right.

Now, Doctor, assume for the moment that the square mile area served by Christiansburg Industrial Institute was—

let's go back—by the Jackson P. Burley School was 739 square miles. Just assume that for the moment.

Assume that the square mile area served by the Christiansburg Industrial Institute is 822 square miles. Assume that the square mile area served by Carver Regional High School was 1,338, and that the square mile area for Manassas Regional High School was 1,679 square miles.

Doctor, under no stretch of the imagination could they be called neighborhood schools, could they? A No, sir. I don't think so.

Q But wasn't it true, Doctor, that at the time it was felt that the educational advantages that these blacks [F-131] were to get at these regional schools outweighed any advantages that somebody might felt existed in neighborhood schools? A I don't know all the circumstances surrounding the establishment of the regional schools and the basic points of view existing. Obviously they were these schools we were talking about. They were segregated and it was one way, presumably, to provide a better program than was available locally.

[F-161] * * *

[Q] Mr. Lucas did ask you or refer to the statement of policy adopted by the State Board of Education right after the first Brown decision. Would you look at pages 42 and 43 in Plaintiffs' Exhibit 119. These are the minutes of June 23, 1955. A I am sorry. 19?

Q Exhibit 119, sir, on page 42. A Oh, excuse me.

Q At the bottom of the page.

I believe that was a special meeting. All right, sir, would you read beginning with, "The purpose of the meeting"? A This is June 23, 1955. "Purpose of the meeting.

"The purpose of the meeting was to discuss proposed procedures and policies to be followed for the session 1955-'56 in light of the decree handed down on May 31, 1955, by the Supreme Court of the United State in the above-mentioned case.

"After mature consideration, upon motion duly [F-162] made and seconded, the following policy was unanimously adopted, the Governor concurring:

"The problems created by the decision of the United States Supreme Court cannot be solved suddenly. The Court recognized that those responsible may well take into account the public interest in the elimination of existing obstacles in a systematic and effective manner. The Court further recognized problems related to administration, physical conditions of school plants, the transportation of pupils, personnel, revision of school districts and attendance areas. Attention was directed to the possible necessity for the revision of state and local laws."

Q Now, sir, I don't mind you reading the whole thing if you want to, but if you would come down to the point that I am making is what, as a result of all this, did they do. Look at the last paragraph under this on page 43 beginning with, "In view of these facts and circumstances." A "In view of these facts and circumstances, the Governor and the State Board of Education hereby declare and adopt as the policy of this Commonwealth that the State Board of Education will continue to administer its functions, in co-operation with the local school authorities, to the end that the public schools of Virginia open and operate through the coming school session as heretofore."

[F-163] Q That meant business as usual, didn't it? A Meant a continuing—

Q Segregated system of schools? A What they had been doing.

Q Right. A That would be my understanding.

Q All right, sir.

Doctor, do you remember for how long after the Brown decision the State Board of Education still called separate conferences or held conferences for principals and teachers and so forth on a segregated basis? A That was done up until about the year 1965 at which time it was indicated as a part of the statement of compliance of the State Board of Education that such practice would be discontinued. '65 or '66.

[F-164] * * *

Q Doctor, are you familiar, just generally, and again, sir, I promise you I am not trying to ask legal questions, that is something the Court decides, but you are generally knowledgeable of Section 22-30 imposing on the State Board the responsibility for dividing the state into appropriate school divisions. You are generally familiar with [F-165] that aren't you? A Yes, sir.

Q Do you, as an administrator and educator, were there any changes made between the laws that existed last year and the law that exists as of July 1st this year? A Section 22-30, I think was amended.

Q Yes, sir, it was. A Yes, sir.

Q In what particulars, do you recall? A To provide that until the first day of the fourth month of the session of the General Assembly, at which time a report of the Commission on Criteria for Dividing the State into School

Divisions shall be submitted, the State Board would be governed by the following criteria. And there were two set forth.

Q Right, sir. One of them was no school division shall be composed of more than one county or city, is that right? A Yes, sir.

Q Now, was there any such limitations in 22-30 prior to this amendment? A No, sir.

Q Let me let you read. Was it? A No, sir.

[F-166] Q That is the change, is it not, sir? A I don't think there was any prohibition—

Q Right, sir. A —as to the number.

Q Do you know when that was enacted, sir, roughly? A I do not recall.

Q In the spring of this year, wasn't it, sir? A Oh, the amendment?

Q That's right. A Yes, sir, it became effective July 1, 1971.

Q After this suit had been pending, is that right.

If I advised you this suit has been pending say since December of last year, isn't it true that— A This was after.

* * *

DISTRICT COURT PROCEEDINGS OF AUGUST 24, 1971

[G-4] PROCEEDINGS

(August 24, 1971) (Tuesday at 10 o'clock)

The Clerk: Civil Action 3353-R. Carolyn Bradley, et al., versus the City School Board of the City of Richmond, Virginia, et al.

Case continued from yesterday.

[G-45] * * *

Redirect Examination

By Mr. Lucas:

* * *

[G-56] Q A discussion of the actions of the State Board with respect to compliance with Title VI in the school divisions that were and were not in compliance, I would like to show you a letter, sir, addressed to you dated November 10, 1965, and ask you to read the first paragraph of that letter and tell us who it is from? A This is from—dated November 10, 1965, from William C. Battle.

The first paragraph—

Q Addressed to you, is that correct? A Yes, sir.

* * *

Mr. Lucas: I asked him to read the first paragraph, Your Honor.

The Witness: "As we near the end of our ordeal of negotiating compliance plans for the various school divisions in Virginia, there is one matter that is [G-57] giving me considerable concern. You will recall at all of the group meetings we have told the various supervisors that in our opinion the free choice plan was calculated by HEW to be an interim solution that would give way in the not too distant future

to geographical zoning. I am now more concerned about this than ever and I see signs in Washington that lead me to believe that HEW will push for unitary school systems without much further delay. For this reason, it occurred to me it might be well to suggest to the various superintendents and the school boards that they give consideration to one or two alternatives."

Q Read the rest of it, if you will. A "First, make sure that their plan is a complete uninhibited free choice with no vestige of discrimination and prepare themselves to support such a plan in the federal courts or, two, begin to plan towards the establishment of a unitary school system based on nondiscriminatory geographical zones.

"If you wish to discuss this matter more fully, I will be glad to meet with you at your convenience. Also, if you think it might be helpful, you may enclose a copy of this letter with your communication to the various divisions."

Q This letter was in 1965, is that correct? [G-58] A Yes, sir.

Q And what function did Mr. Battle have wih respect to the HEW compliance? A I don't remember all of the specifics. We have someone who does.

Q In general. A Mr. Battle was one of those designated, I think, by the Attorney General's Office, to render special assistance to the school systems of Virginia in meeting the compliance requirements.

* * *

Q What did you do? Did you follow his recommendations and distribute his letter, or the letter with that recommendation in it, to all school divisions? I believe your reply to his letter is attached. A Yes, sir.

[G-59] Q Would you refer to that and tell me what your response was, sir?

* * *

A The general contents, I think, first recalling that during the regional meetings it was clearly stated that compliance could be on a basis of freedom of choice plan or through the establishment of the non-discriminatory attendance areas. It was further stated that freedom of choice plan was regarded by the U.S. Office of Education to be a transitional step.

Then in view of the emphasis and intentions given during the regional conferences, I don't remember the dates on those, to means of compliance and reported changes in regulations presumably under Title VI it would appear desirable that we hold at this particular time on the matter of sending a specific communication to Division Superintendents [G-60] regarding compliance in the future.

[G-62] * * *

Q I have here a document which was furnished in the discovery in connection with the HEW materials. It is a memorandum dated June 1, 1965, addressed to you, Dr. Wilkerson, signed by Mr. Elmore. Mr. Elmore is a member of your staff, is that correct? A Yes, sir.

Q Would you examine this document and read the second full paragraph and the fourth, please?

[G-63] * * *

Second paragraph. "HEW regulations for Title V. These go beyond what would appear to be the intent of Section 604 of the act which prohibits federal direction, supervision,

or control over the curriculum program of [G-64] instruction or administration of any school system. The regulations contain entirely too much prescriptive detail.

By Mr. Lucas:

Q The fourth paragraph, sir. A "Program Analysis Form. This is another example of HEW assuming the role of judging a state program, federal control is very evident. Section 504 of Title V sets forth four criteria for approval by the Commissioner of state applications for funds, all of which are routine except subject A which astonishingly places upon the Commissioner the determination of whether the state educational agency possesses the ability to participate effectively in meeting the educational needs of the state."

Q Would you read the last paragraph, sir? A "In summary I feel that the information requested in support of the state application for funds under Title V goes beyond the purview of the Commissioner's authority provided in the act and constitutes federal control which is prohibited under Section 604 of the act. You probably will not want to say these things, however, I would suggest that the forms be reduced in an amount of detail which is nonessential to giving the Commissioner a reasonable basis for approval of state plans."

[G-74] * * *

Q There was some testimony, sir, with respect to the exhibits showing assignment of students across county-state lines. I asked you earlier with respect to your Superintendent's Memo Number 6049, I have collected a number of the replies here, and am offering at this time as Plaintiffs' Ex-

hibit Number 94, at which time I will ask the witness a question—

[G-75] * * *

Q The first memorandum shows a report was due June 25, 1971, is that correct? A Yes, sir.

Q And what county is that from? A County shown here is Frederick County.

Q All right.

And what years does it cover, if you look in the left-hand margin? A 1940 to 1965.

Q Would you look at 1940 and tell me the county or city attended by the children from Frederick County? [G-76] A County or city attended, Winchester, 13 black and 57 white.

Q Now the reason? A The reasons, Winchester proximity to Frederick County schools. No black high school.

Q All right.

And let's skip down to 1952. Does it show Winchester with 22 blacks, tuition students attending schools in another city or county, is that correct? A 22 blacks.

Q Attending Winchester? A Yes.

Q Same reason, no black high school, is that correct? A That is so indicated.

Q From that period forward all of the students attending across the line are black, are they not? A So shown.

Q Through 1965. They went there because there was no black high school in Frederick County, is that what it reflects? A This is what that reflects.

Q Directing your attention to Cumberland County, it begins in what year, sir? [G-77] A 1961-'62.

Q All right.

Shows one white and 43—one white to Richmond City as retarded, is that correct? A To Richmond City, retarded.

Q 43 white to Prince Edward County, race, integration, is that correct? A Right.

Q One to Asheville City, special training? A Right.

Q Six white to Powhatan, race, integration? A Right.

Q All right.

Do all the rest of these through 1968-1969 involving Powhatan and Prince Edward County— A Powhatan and Prince Edward County.

Q Do all of those from that period forward show integration as the reason? A '63 on, yes, sir.

Q And they are all white, is that correct? A Yes, sir.

Q They are tuition students? A Total tuition students attending.

Q All right.

[G-78] What is the note there beginning with, "I point out"? Would you read that? A "I must point out that the children attending schools in Prince Edward and Powhatan were attending private academies."

Q All right, sir.

Directing your attention to Orange County Public Schools, Orange, Virginia. What county—I am sorry. Give me the year that is covered by this. A Let's see. Year looks like 1940 to 1967-'68.

Q Shows none in '67-'68. The last year was 108 Negro '66-'67? A Yes, sir.

Q And where did they attend? A County attended school, Culpeper, George Washington Carver Regional School.

Q Regional High School, is that correct? A Yes, sir.

Q And reason stated for each year was what? A "This was the Negro high school serving the Counties of Madison, Orange, Culpeper, and Rappahannock."

Q And all the students attending were Negro, is that correct? A Certainly all of these as listed so indicate [G-79] as Negro.

Q All right.

Dickerson County. Is it also tuition students? I believe they went reverse order starting with '62-'63 and then up through '70-'71, is that correct? A Yes, sir.

Q See if there is another page here starting with what year? A Starting with '53-'54.

Q All right.

And to where were they sent? A To Russell County.

Q And how many were there? A 23 black.

Q And what was the reason? A No secondary school in Dickerson County for black students.

Q All right.

Does that reason proceed on this page all the way through 1961-'62? A Through 1961-'62, yes, sir.

Q All right.

Directing your attention to the first page from '62 through

1964-'65. Let's start with '62-'63. What [G-80] does it show as the receiving county or city? A '62-'63, Russell County, 65 white.

Q That is the first time it shows white, is that correct? A Yes, sir.

Q What reason do they show for white? A Proximity to Dante Elementary School.

Q And also show 22 black for that same area, is that right? A Yes, sir.

Q And the same reason, no secondary school in Dickerson County for black students, right?

Does that pattern persist all the way up to 1964-'65 for blacks? A Yes, sir.

Q Same reason for white, does it not? A Yes, sir.

Q And from 1964-'65 through 1970-'71 the same pattern continues for white students with the same reason given, is that correct, proximity to Dante Elementary School? A Yes, sir.

Q And no blacks are shown after '64-'65, is that correct? A No blacks are shown.

[G-81] Q Thank you, sir.

Bland County School Board. What years are covered? A Years 1950-'51 to 1964-'65.

Q And they are sent to Tazewell County? A Looks like entirely.

Q All right.

And all of the students are black, are they not? A Yes, sir.

Q And what is the reason given in 1951? A '50-'51, nearest colored high school.

Q And that is the same reason given all the way through 1965, is that correct? A Beginning '56-'57, nearest colored elementary and secondary school.

Q I see.

Added the elementary on that year. That continues through 1964-'65? A Yes, sir.

Q Now, Arlington Public Schools, 1946-'47, what does it show? A 1946-'47 shows a total of 19 nonwhite, 19 Negro, county or city attended, Manassas.

[G-82] Q Reason? A Reason, State Regional Vocational School Programs not available locally

Q And at that time the schools were racially separate, is that correct? So if there had been a white school available it would not have been available to black students at that time? A In '46-'47?

Q Yes, sir. A I lost your question.

Q State Regional Vocational School Programs were available in many places but they were available separately for white and black, is that correct? A That would be—a regional school for—there were those that have been stipulated for blacks.

Q Vocational school programs were available in counties, individual counties at that time, were they not? A Yes, sir.

Q But they were not available for black students unless there was a black vocational regional school? A I don't recall that.

The Court: Well, prior to '54, Dr. Wilkerson, you separated them by race regardless, did you not?

[G-83] The Witness: In '54, yes, sir.

The Court: Prior to that?

The Witness: Prior to that, yes, sir.

By Mr. Lucas:

Q All right.

Bath County. What period is covered? A '40-'41 to '70-'71.

Q All right.

The first year they sent students to another county, according to this record, is what? A '45-'46, 20 and a half.

Q Where did they send them? A Alleghany County.

Q What was the ratio of black? A 20.5.

Q All right. What was the reason? A No high school.

The Court: I suspect that one was looking forward to a unitary school.

By Mr. Lucas:

Q Directing your attention, sir, to 1958 and '59 figures, is that the first time that shows whites being transferred, first time it shows white? A White.

[G-84] Q And the reason given there is location? A Location.

Q All right, sir.

Starting in '59-'60 it is again all-black, is that correct? A All-black.

Q All right.

Same reason, no high school, except when we get down to 64-'65, that is the last year they are sent to Alleghany County, right? A Right.

Q What is the school district shown for 1955-'56 wherein ome of the students were sent across the line? A '65 and 66 they show no known.

Q Do they show a reason? A Reason, fully integrated.

Q Thank you, sir.

Greene County, what year does that start? A 1941-'42 o 1968-'69.

Q All right.

And the students from 1941-'42 until—through 1947-'48 ere all white, is that correct? A Right.

Q They were sent first to Madison County and in [G-85] 47-'48 some were sent to Albemarle County? A Right.

Q Reason given in each instance was "choice of parnts"? A Right.

Q '48-'49 is the first time the Negro students were nt, is that right? A Right.

Q And they were also sent to Albemarle County? A lbemarle County.

Q What was the reason? A No Negro high school in reene County.

Q All right, sir.

Does that same pattern repeat itself throughout that period r whites as shown, choice of parents; for Negroes, no egro high school? A That would be the pattern there, quick examination.

Q All right, sir.

In '64-'65 did it also show 25 Negro to Albemarle County, no Negro high school in Greene County? A Right.

Q And what happened in '65-'66? A '65-'66 pupil scholarships sent directly to [G-86] state.

Q Do you know what that means? A I am not certain. I assume it means for payment.

Q It doesn't show that they have any record at that point of where the student went? A It shows no record of the number of the students or what happened.

Q Just says, "Pupil scholarships sent directly to state." All right.

Buena Vista City Public Schools, what period does that cover, sir? A 1940 to 1971.

Q All right.

In 1940 would you tell us how many students there were and their race? A 25 black.

Q To where? A Lexington.

Q And the reason? A Contract arrangements with Lexington City for black pupils from Buena Vista City and Rockbridge County to attend Lynburn Downing High School in Lexington.

[G-87] Q And does that continue all throughout that same page, both race and reason? A Yes, sir.

Q And that continued until when? A This continued until 1967.

Q '67 they show none? A Show none.

Q Thank you, sir.

All right. Shenandoah County. What jurisdiction does it cover? A 1940-'41 to 1970-'71.

Q All right.

Beginning in '40-'41 shows— A Information not available.

Q As to the number? A As to the number.

Q Shows they went to, does it not? A City of Winchester, City of Charlottesville.

Q Shows the race? A Black.

Q Shows no Negro high school in the county? A Right.

Q All right.

That is the same, City of Winchester '41-'42 [G-88] and 42-'43, '43-'44, what does it show as to the location? A City of Winchester and Prince William County.

Q And the same reason, correct? A Right.

Q And that pattern persists until '46-'47. What county or what city does it show then? A City of Winchester, City of Harrisonburg, and Prince William County.

Q All right.

Does that same pattern continue through '62-'63? A Right.

Q Again shows black and no Negro high school in the county? A Right.

Q '63-'64 it shows to the City of Winchester black, and states option chosen by parents, is that correct? A Right.

Q '64-'65 is none? A None.

Q Giles County, what period does that cover? A '40-'41 to 1970-'71.

Q All right.

[G-89] Would you read? A None for '40-'41.

Q '41-'42, Montgomery County, black, and what is the reason stated? A No program available in Giles County at this time for blacks beyond tenth grade.

Q Is that same reason stated throughout that page covering through 1950-'51? There are several exceptions there, I think you should know. A 1947-'48.

Q What does it show? A 19 to Bland County, 17 white. Reason, isolated part of Giles County, proximity to Bland County schools.

Q Same pattern does persist, though, for black students, does it not? A For blacks. No program available beyond the tenth grade.

Q Same pattern repeats itself through '57-'58? A Blacks, no program beyond tenth.

1951-'52 through '57-'58 for that page, same pattern.

Q And the last black shown as being transported to Montgomery County was '58-'59, no program available in [G-90] Giles County at this time for blacks beyond the tenth grade, is that correct? A Right.

Q And the rest of those that follow through '70-'71 are white and the reason given is isolated apart from the county? A Right.

Q Alleghany County. What period does that cover? A 1940 to 1958.

Q All right.

Directing your attention to 1958. It shows? A Shows a total of 583.

Q Tuition students attending schools in another city or county? A Right.

Q Where does it show they go? A Covington.

Q Covington City, would it be? A Covington City. 92 black, 491 white.

Q What is the reason? A Prior to 1958 Alleghany County and the City of Covington comprised one school division. When they separated in 1958 the county was left with no high school and [G-91] consequently sent all secondary students to Covington, Clifton Forge, or Bath County on a tuition basis.

In 1963 Alleghany County High School opened for white high school students only. Negro high school students continued to attend the Negro high school in Covington. Also a few other students, white and black, continued to attend school in Bath County, Covington, or Clifton Forge, because nearby Alleghany County facilities were not yet available.

In 1965 such facilities were ready for use and both school divisions at the same time completely integrated. Since then the only students sent outside of the county have been from two to six special education students who have attended school in Covington.

Q The breakdown is shown on the following page, but that summarizes it on the first page, is that correct? A Proximity, same as above.

Q All right. That is through '58. Read 1959. A 1959.

The numbers are 593 to Covington and 105 black, 488 white. 17 Clifton Forge, 9 black, 8 white; 10 Bath County, 10 white.

Q All right. A Reasons—

Q The reasons stated covered through 1965, did [G-92] it not, 1965? The reason is special education? A Right.

Q Through 1970, is that correct? A Yes, sir.

Q All right.

Rockbridge County Schools. Tell me the period covered for this? A 1948-'49 to 1965 to '71.

Q All right.

Gives you '48 and '49? A '48-'49, the white, 109 and black 83 to the Town of Lexington. Reason, distance involved, overcrowding, no high school for blacks in R. County, Rockbridge County.

Q All right.

Same reason, same pattern follows pretty well 1951-'52? There were no whites, correct in '51-'52, sir? A '51-'52, no whites. 138 black.

Q '52-'53, no whites? A Right.

Q '53-'54, no whites? A Right.

Q '54-'55 125 white, 154 black, same reason given? A No high school, right.

[G-93] Q 1962-'63, would you read that, please, sir? A 20—1962-'63, 20 white. 139 black. That is two under white. I assume pupil scholarship.

Q Where do they show they go, the whites go to where? A The 20 white to Bath County, twelfth grade too small, is the reason.

Q 139 blacks go where? A Town of Lexington. No high school for blacks in the county.

Then two pupil scholarships, white, Augusta Military, discipline reasons.

Q And these were no more after '64-'65 school term, is that correct? A No more after that term.

Q And that term, it showed 166 black to Lexington because of no high school for blacks in the county? A Right.

Q All right.

Powhatan County Public Schools. What years did that cover? A 1960-'61 to 1968-'69.

First year '60-'61, number five, county [G-94] attended Goochland High School, one white. Reason, by choice. Midlothian High School, one white by choice. John Marshall High School, one white by choice. Huguenot High School, two white by choice.

Q Same general pattern followed throughout, it is all-white, isn't it? A Yes, sir.

Q Thank you, sir.

Tazewell County cover '59 through '70, is that correct? A Right.

Q And all of those are white? A Yes, sir.

Q And through '65, through 1964 the county or city attended, and the reason and place? A Through '65 attended Russell County Schools. Russell County proximity to certain Tazewell County Schools.

Q All right.

'59 through '70, again all white, what does it say up there

as to reason? A Attended Smith County Schools, Smith County proximity to certain Taxewell County Schools.

Q Second page. Would you read paragraph at the top? [G-95] A Group two, please find listed below the number of public school students by race who resided in Tazewell County, Virginia, and attended public schools in another state. Records prior to 1959-1960 school year are not available.

Tazewell County year 1959—

Q Yes, please. A Number of students by race, five black. School attended and location, Excelsior High School, McDowell County, West Virginia, tuition or transportation paid.

Q I don't think that question called for a reason.

All right.

Does that continue through 1964 showing the tuition paid to McDowell County, West Virginia? A Tuition paid and McDowell County, West Virginia.

Q All right, sir.

King William, King and Queen County Schools, what years are covered there? A Let's see. '65 to 1967 to 1971.

Q Excuse me. Shows the Town of West Point, in reply to Superintendent's Memo 6049, does it not? [G-96] A Town of West Point?

Q Right. That would be the sending jurisdiction.

Okay, how many students does it show? A Tuition attendance attending school in another city, 35 for 1965. County or city attended, King and Queen, 35 Negro. Reason, freedom of choice.

1966, 33 to King and Queen, 33 Negro; reason, freedom of choice.

1967 to 1971, none.

Q What does it say the reason? A Pupils who formerly attended school in King and Queen were assigned to West Point Schools.

[G-97] * * *

Q Referring to the Gloucester County School Board situation, is there a reference made there to page 20 to some problems securing the financial appropriations from the individual school boards? Let me direct your attention to the third paragraph from the bottom which begins, "Virginia law permits the combining of political subdivisions." Have you found it, sir? [G-98] A Yes, sir. I found the paragraph.

Q Second sentence says, "But the operation of schools at the local level is vested in county and city school boards, the boards of supervisors, and city councils providing, as they should, the essential local component of school funds." Under present state law is there now authority to require local school components to provide their appropriate share of school funds, sir? A Under the new Constitution the General Assembly would assign to each school division the amount required of that school division to put into operation programs meeting the Standards of Quality.

Q So they could require them to do whatever was necessary to meet those standards? A That is my understanding, that the General Assembly shall do that.

Q Directing your attention to page one of Exhibit 82, there is a statement there from the minutes of the Board

entitled "Consolidated Program, School Division." You read another statement by the Board with respect to consolidations. This one comes from the minutes of August 24-25, 1944. Would you read that statement, please. A "Consolidation Program"?

[G-99] Q Yes, sir. A "School Divisions.

"The Superintendent presented a long-range plan for the consolidation of school divisions with a view to greater efficiency in the administration of school affairs. This plan would call for the creation of between 50 and 60 school divisions in the state to replace the present 110 divisions and would involve the creation of division boards of education, the membership of which would be based upon the school population in the counties or in the counties and cities comprising a division."

Q I am sorry. I thought you read it all

Go ahead. A "The Board looked with favor upon the general plan subject to the working out of details."

Q All right.

Directing your attention to page two with respect to the Negro high school for Orange, Madison, Greene, Rappahannock, and Culpeper Counties. I asked you on direct examination with respect to the state participation in the setting up of these schools. Would you read that paragraph, please? A "A delegation representing the area comprising Orange, Madison, Greene, Rappahannock, and Culpeper Counties [G-100] appeared before the Board in the interest of the establishment of a central Negro high school to be owned and operated by the five participating school divisions. Proposed building will cost approximately $350,000 and in order to aid with the vocational facilities the

committee requested the State Board to appropriate $75,000 from the vocational capital outlay fund. This request was tentatively approved for recommendation to the Governor contingent upon the needs of other sections of the state."

Q And turn to page three. This is another reference to this same matter. Would you read that, please, appropriation for— A "For regional Negro high school for Orange, Madison, Greene, Rappahannock, and Culpeper Counties. After further considering a request presented at the January meeting by a delegation representing the area comprising Orange, Madison, Greene, Rappahannock, and Culpeper Counties, for appropriation from the vocational capital outlay fund for the establishment of a central Negro high school to be owned and operated by the five participating school divisions, the Board voted to recommend to the Governor an appropriation of $75,000."

Q All right.

Directing your attention to page 11, sir, the [G-101] last paragraph, "Joint Schools in Albemarle County and City of Charlottesville." A Yes, sir.

"Upon the request of the School Boards of Albemarle County and City of Charlottesville the Board approved the plan for the establishment and operation of a joint school for Negroes in accordance with the rules and regulations for such schools adopted by the State Board on May 24, 1946, as provided by Section 670 of the Code of Virginia."

Q That would indicate, sir, that there was a specific state statute and that there were rules and regulations adopted by the State School Board for the operation of these schools, is that correct? A For the joint—

Q School for Negroes? A For the joint operation of schools.

Q So you do have rules and regulations for that? A Yes, sir, with respect to Committee of Control and the financing, selection of teachers, and so on.

Q They did have to come to you for approval? A I would assume from this, yes.

[G-105] * * *

Recross Examination

By Mr. Little:

[G-114] * * *

Q I believe you stated very clearly that the State Board of Education prior to this July at least, certainly had the right to make one school division out of two or three political subdivisions, is that right? A One school division out of several, yes, sir.

[G-125] * * *

CALVIN E. GROSS

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lucas:

[G-128] * * *

Q All right.

After Weston did you hold another position? A After Weston?

Q Yes. A 1956 I became the Superintendent of Schools in the Niskayuna Central School District, which is a suburb of Schenectady, New York.

Q How large a system was that? A We had 3,000-odd students there, as I recall.

Q From there where did you go, sir? A I was appointed Superintendent of Schools in [G-129] Pittsburgh, Pennsylvania.

Q How large a system is Pittsburgh? A We had 70 or 72,000 students.

Q From there where were you employed? A 1963, in April, I became Superintendent of Schools in New York City. I was there for two years.

[G-132] * * *

Q Dr. Gross, what are the goals of public education in the United States as you see them? A I think that the goals of education are primarily intellectual.

I think that the school is the only social institution which has the specific charge of developing the intellects of its future citizens.

Within this primary obligation of the schools I would include these major components. The ability to use the English language well, to handle numerical relationships effectively, to understand the physical world around us, for students to be acquainted with and to appreciate their heritage as American citizens, and as human beings, and to enjoy the arts.

[G-133] I think that more broadly it is a goal of the schools, should be the goal of the schools, to develop the talents of each child so that he becomes a self-sustaining and productive and emotionally stable adult who can compete and cooperate, both, with complete personal integrity.

The schools have an obligation to develop the social and

emotional welfare of their students, because it relates back very definitely to what I have characterized the primary goal, that of intellectual development.

People are, as school districts ought to be, unitary. They possess intellects and emotions, both. One impinges upon the other. They influence one another.

A student who is subject to psychologically repressive conditions of one form or another, who is malnourished, has inevitable defects and inhibitions on his intellectual development.

Q Doctor, what effect does racial segregation have on the goals which you have described, of American education? If you will, Doctor, would you relate them to some of the specifics which you have detailed? A Well, I would like to think of segregation as meaning a phenomena which can result in racially-identifiable schools without any consideration as to how the schools got that way, with relation to the present [G-134] condition of racial balance without attempting to define any kind of balance.

Defining segregation in that way, I think that it positively inhibits the attainments of the goals which I have just mentioned.

I think that there are two kinds of harmful effects. Some that are tangible and some that are intangible.

The tangible goals anyone can see. The statistics show them up. In schools which have a high proportion of minority group students in school communities where the racial ratios are quite the contrary you find typically, not always, but typically you find older buildings, you find less experienced, less well-prepared teachers, and less money being spent on those schools. As I say, those are tangibles.

The intangibles, I believe, are more important, although you can't always put your finger on them.

Segregation of school children does two things. In the minority group children it creates spurious feelings of inadequacy or inferiority. In the majority group children it creates equally spurious feelings of superiority or inflated personal worth.

Q Doctor, can you take that back now to some of [G-135] the goals and objectives that you described for education, this spurious feeling of inferiority or superiority. How does that work in your experience with school children? A If a black child comes to school or progresses through school in a segregated situation, that school is regarded, he soon comes to learn, by his teachers, by his parents, by the community, by his fellow students, by himself, by everyone, as an inferior school. He comes to see himself as an individual who has limits about him. There are things which he takes for granted he cannot do.

This is what I mean by feelings of inadequacy. It shows up in his schoolwork.

What some people like to call self-fulfilling prophecies go to work: "I think I can't do it," you can't do it.

Q Does this relate to the teacher also? A This relates to the teacher, it relates to the parents. If a parent somehow feels that his child is inferior, or even feels that the child may be perfectly normal or well endowed and is receiving inferior instruction that parent, that teacher, will tailor his sights for that student so that no one really expects that much of him.

People tend to react as the kind of people you regard them as. Particularly in this intellectual sphere.

[G-136] There are apocryphal studies out of New York City about the teacher who was always calling on Susie for the answer because she wanted the right answer out of the

class. Susie had an IQ of 126, but Johnny never got a chance to think twice, because he hesitated or gave the wrong answer because his IQ showed up on the roster as 86. But at the end of the year the teacher discovered that those were locker numbers not IQ's, and that Johnny was really smarter than Susie. But the teacher had expectations of those children and apocryphal or not I think it is a good example of the way this kind of thing tends to act in the classroom.

Q With respect to the white child, Doctor, how does that false perception, I am sorry, I have forgotten your term— A If a white child is in a school that is predominantly white, it does not exhibit a reasonable relationship to the ethnic balance in the school community, and if there are other schools that are inferior with what he inevitably comes to regard as inferior people going to school in them, on balance that makes him then feel he is in a superior school, he is a superior person.

Q How is he harmed? A This is unhealthy psychologically for him as [G-137] well, and does not prepare him for the world he is going to have to live in.

Q You have answered the question.

Doctor, you talked about racially-identifiable schools. Looking at the Richmond school community based solely on the information that you have had in your experience as an educator, do you have an opinion as to whether or not the Richmond school community is one with segregated schools? A In my opinion it is a school community with racially-segregated schools.

Q Is that assuming the conditions of Plan III in operation? A Oh, yes. Because Plan III merely does the best

that Richmond can do within the confines of the present school district.

Q Is there any educational reason that you know of to limit what Richmond can do to the confines of the present school district? A I can't think of any educational reasons why the school district lines should be drawn just as they are at present, no.

Q All right, sir.

Doctor, turning your attention to the Richmond school community desegregation plan as prepared by the Richmond [G-138] School Board, and I take it you understand that this is merely an example of one way in which this school system might be desegregated? A Right.

Q Do you have an opinion with respect to the feasibility in general of such a plan based upon your own experience as an administrator of both small and large school systems? A Well, as I say, I have talked with Dr. Little and gone back over it with him and quizzed him about it.

It strikes me as being a very straightforward mechanical solution, without any gimmicks to it, to creating in a very acceptable way a realistic integrated or desegregated, I should say, school community, of a very reasonable total size, approximately 106,000 students.

* * *

[G-139] Q Before you go any further with the Richmond plan, tell me how you cope with size and what fact does size of the school system place in terms of the goals of education? A I think that after a school district reaches a certain size, and I would say that city school districts these days have reached that size, let's say somewhere be-

tween 15 and 20 and 30,000, if you wish, they need to decentralize this situation instructionally.

[G-145] * * *

Q Doctor, when you were in Pittsburgh did you have experience with compensatory education? Did you adopt some innovations in an attempt to break the cycle in terms of poverty level children, black children? A Yes. We embarked upon what was then, and I think still has been, the nation's largest teaching project which, roughly speaking, is where groups of teachers are responsible for groups of children, and there is great flexibility in the ways in which they are assigned. You have small groups, large groups, and so on.

Q Did you receive a lot of foundation support, state support? A We had a considerable amount of money from the Ford Foundation and from the A. W. Mellon Educational and Charitable Trust which is located in Pittsburgh.

I picked—I picked, the school board went along with my recommendation, that we pick as a primary group of schools those located in what is known as the Hill [G-146] District of Pittsburgh, which is the lowest social-economic area in the town.

This was an educational peg, in my mind, on which to hang compensatory instruction for the children going to school in that area.

We had lots of positive results. It was a very popular program, tremendously popular. Everybody in town wanted to get under the act once it began. The police department wanted to help, the social agencies, the visiting nurses, social people, we really got a lot of help on that.

What I was waiting for, and I am very disappointed to say we never got, was any demonstrably significant results in student achievement. Attendance was better, morale was higher, we had team aides from the surrounding universities that all wanted to teach there once they got their feet wet and found they were very desirable schools and interesting children to work with, all those things, but not heaven. And this was, to me, very disappointing.

There was another instance that I could relate too if you care to hear it.

Q Please. A Well, this was about the time that James [G-147] Conan had recommended, in his American High School Today that no English teacher should have more than 200 students because of the necessity of grading themes and particular attention because of its very high priority in what pupils should learn. We didn't have the money to do it, of course, or we probably would have done it long since. But one of my favorite attacks on the problem was to focus resources in the particular area to attempt to prove that we could get results and then be able to go to the legislature in that case who had the purse strings and say, "Look, give us money, we can get results. Give us some more money and we will duplicate it."

Again I picked Westinghouse High School, which was virtually all-black, and the only one so, in Pittsburgh, to put in 50 teachers, more teachers in the English department from one spring to the next fall.

I said, "Who is the best English teacher in Pittsburgh? I want him or her to be department chairman and run this program." And they picked the lady—I wanted somebody for at least two years and she was going to retire in a year. So we broke the retirement, the board suspended the

retirement regulations for one year so that Helen Hillard could run it. And they did some good, but the thing that astounded me was, she reported back to me [G-148] after about the end of the first semester, came in and said, "Dr. Gross," said, "that is a perfectly terrible English department." Said, "Those teachers don't know the English language they should, don't know how to teach children." And I had not expected this. I thought we were going to add goodness to goodness.

And it turned out that we really had to remake that English department and began to open our eyes as to what might be going on elsewhere in Pittsburgh. As I say, that is one of the inevitable results of segregation.

Q Hill District was a segregated area, was it not? A Yes, it was.

Q Has this been the experience nationally, from what you know, to the compensatory education program where the programs remained racially separate? A Yes.

I must say everybody is impatient to get results very quickly, but even the length of time we have had to observe these things have been disappointing results accruing and rarely, if ever, anything significant.

[G-149] * * *

Cross-Examination

By Mr. Gravatt:

[G-151] * * *

Q The disappointing results that you got in this Westinghouse High School you attributed to the deficiencies of the original 10 teachers who were there before you added the other five? A Correct me if I am wrong, sir. I don't

think I said in that case we got disappointing results. I said we got some good results.

[G-171] * * *

Cross-Examination

By Mr. McIlwaine:

[G-172] * * *

Q Do you recall at that time, Doctor, that you made a statement in 1963, June 29, after you had become the Division Superintendent, to this effect, "My educational strategy is to concentrate on the children who are either very bright or fairly dull or who seem dull because their intellectual potential has been concealed by slum life. As we raise the intellectual tone of a school the process sends impulses all the way back down the line like a row of dominoes falling in succession for the slow-learning child, especially if he is culturally handicapped, I have a radical prescription. That is, to insist that he master fundamentals before he tries anything else." "Any" there is italicized in this statement. "English, mostly reading at first, is the [G-173] most important subject we teach. Once a child can read well he can learn anything. All the doors fly open." A Did I say "learn anything"?

Q "Anything." A Okay.

Q "Once a child can read well he can learn anything. All the doors fly open."

Do you still subscribe to that philosophy, Doctor? A Yes, I do.

Q Do you recall also at that time you made a statement upon becoming the Superintendent of Schools of New York,

"That part of the appeal which brought me to New York was the problem of disadvantaged children, educating children from depressed areas is an essential part of the job in a large city"? A Yes.

[G-177] * * *

Q Suppose that you had a figure that was fixed at 20 to 40 and those ranges were established by a school system because it reflected a general area and the quota in each school was designed to be fixed at the racial percentage of the students throughout the system? [G-178] A Oh, I think you are making it palatable enough in this sense.

Given an over-all racial average of 34 percent black, and that isn't fixed by my mind, this is a fact of demography in the Richmond area, so nobody fixed it. It just comes out, just the way people live here. You said let's work toward that number and we will stay within a range of 20 to 40 because that seems to be a reasonable variance, I think that is all right.

Q Well, then, you would advocate that racial quota in every school in that instance? A Yes.

Q All right.

Now, in such a situation you would subscribe to an educational theory? A Educational what, please?

Q Educational theory or educational program which uniformly without exception and continuously fixes the Negro in a racial minority in each school in the system? A That would be an inevitable consequence, yes.

[G-179] * * *

Q Would you say in this situation it is impossible for any Negro child to receive an equal educational opportunity

unless he is submerged in the superior number of white students in the area? A I didn't say that.

Q Well, isn't that the inevitable consequence of a quota that puts him in the 20 to 40 percent in every school? A Well, in the context in which we have given [G-180] percentages of a third in the area and in the schools so that it is an equal reflection I think that—which leads then to schools that are not racially identifiable, that that is an essential for the best education, yes.

Q Did you advocate this in the Hill District in Pittsburgh? A No, I did not.

[G-187] * * *

Cross-Examination

By Mr. Gray:

Q Dr. Gross, how many schools are there in Richmond, Henrico, and Chesterfield? A About 350 as I recall.

Q How many of those are in Chesterfield? A About a quarter of them.

Q How many of those have you visited? A None.

Q None.

How many are in Henrico? A I would say approximately a quarter.

Q How many of those have you visited? A None.

Q And have you visited any in Richmond? A No.

Q Could you tell me what percentage of the teachers in Chesterfield County have graduate degrees? A No. I cannot.

Q Can you tell me for Henrico or Chesterfield [G-188] or Richmond?

* * *

The Witness: I do not know about the graduate degree training of the teachers in any of the three districts.

* * *

Q Do you know what percent of the children in either district are in need of special education because of mental retardation or mental deficiencies? A No.

Q Do not.

Do you know what percentage of the courses in Chesterfield County are on an accelerated basis? [G-189] A No.

Q Do you know how many of the school divisions have kindergarten programs? A City of Richmond and County of Chesterfield have kindergarten programs, but the Henrico County School District does not.

Q Do you know which of the school divisions and to what extent they have ungraded classes? A I have heard of none in any of the three districts.

* * *

Q All right, sir.

Doctor, since you haven't visited any of the schools in Chesterfield County, have you visited in the county? A Visited in the county?

Q Yes, sir. Have you seen or taken a look at the county? [G-190] A I have been around, yes.

Q To what extent? A Well, I have come in from the airport a couple of times.

Q Sir? A I have come in from the airport a couple of times.

Q Through Chesterfield? You took the long way around, Doctor? A You said in the county. I thought you said.

Q I meant Chesterfield County. A You didn't say that.

Q Then I am in error. I didn't qualify it. A No. I came in through the north, the only airport that I know of. In Chesterfield, I was outside the city limits briefly for dinner last evening toward the west. That is about the extent of my traveling.

[G-192] * * *

Q All right.

Your Honor, could I approach the exhibit?

Doctor, I ask you to look at the City Exhibit Number 52, I believe it is, Negro Composition of the Area School Systems.

These two have to be all-white on this exhibit, Doctor, Henrico and Chesterfield, and the one in the middle with the heavy dark dotting is in Richmond. The degree of darkness on the map indicates the degree of increase in black school population.

Now, if this division is created, as you recommend, so that we would have all of this, Henrico, Chesterfield, and Richmond, as a 70-30 white ratio, and it is bordered by Amelia County, which has 80 to 100 percent—no, excuse me, from 60 to 70 percent black or 79 percent black, and Dinwiddie which has 40 to 5[illegible] percent [G-193] black, Prince George which has 39 percent black, and Charles City which has 80 to 100 percent black, and so on on around, is it still

going to be racially identifiable? A Is this proposed consolidated division going to be racially identifiable?

Q Yes, sir. A Not to the degree that the three central counties are racially identifiable now.

Q Just yes or no. Is it or isn't it?

The Court: You may answer yes or no and then give such explanation as you deem appropriate.

The Witness: I would say yes, but not to the degree that the three present districts are.

[G-199] * * *

Q All right, Doctor.

You gave us some criteria for telling whether segregation was causing schools to be inferior.

I believe you said you hadn't looked at any of the Richmond schools. Is that right? A That is right.

Q But you told us that one of the ways you tell whether schools are inferior is that they have older buildings for the blacks, usually, when schools are segregated the blacks have the older buildings, is that right? A I cited that as one tendency, generally.

Q You don't know anything about whether that is true in Richmond, Henrico, or Chesterfield? A No, I don't.

Q You said that usually the blacks had the least qualified teachers. Do you know whether any of that is true in Richmond, Henrico, or Chesterfield? [G-200] A No, I don't.

Q And you said that usually they spend less money on the blacks. Do you know whether that is true in Richmond, Henrico, or Chesterfield? A No, I do not.

[G-203] * * *

Q How many administrative people per 1,000 students do you have in Richmond, Henrico, and Chesterfield school systems? A I don't know.

Q How many did you have in New York? [G-204] A I am not sure I could remember that very well either. We had a horrendous administrative hierarchy. I can tell you that.

Q And that tends to happen every time they start getting bigger, doesn't it, Doctor? A Yes, it does. You have to fight it.

Q You have to fight it.

With two trips in from the airport, did you say, through Henrico and one time out into Chesterfield for dinner, do you really think that you are qualified to determine what is the community here with one trip out to Chesterfield for dinner? A I think I have a very reasonable perception of what the school community consists of.

[G-209] * * *

Q Is that desirable? A Bringing the community and the school closer together?

Q Yes, sir. A Yes, it is.

[G-210] * * *

Q I see.

Doctor, were there lottery features of the Richmond consolidation plan discussed with you? A I remember reading in the plan the three suggested possible ways of doing it.

And in the computer printout there are the computations

of the numbers of birthdays per year required in order to come up with a certain number of students.

[G-211] Q Do you have any opinion about the advisability of taking a bus into a black community, loading it with black children, and taking it out so that it can go to a majority white school, loading it back up in the afternoon and taking them back to the black community? A What about it?

Q The all-black transportation. Is that a desirable feature? A You mean the fact there would be all-black students on the bus?

Q Yes, sir. A If you are going to move the children from one school to another I don't see any how else you would do that.

* * *

Q Did you ascertain how many black children would be bused out of the City of Richmond under this plan? [G-212] A Let's see. I think there were roughly 17,000.

Q Black children being bused out of the City of Richmond? And how many white children are being bused out of the City of Richmond? A I don't remember the total in numbers.

Q Well, do you have any idea how many white children are being bused out of the City of Richmond under this plan? A I don't think I could give you that number without going back and looking at the book.

Q Are there any?

The Court: What is the question now?

The Witness: Are there any white children being bused out?

By Mr. Gray:

Q Out of the City of Richmond? A I don't think there would be very many. If there were I don't see it would make much sense.

[G-213] * * *

Redirect Examination

By Mr. Lucas:

Q You were asked with respect to the surrounding counties to the Richmond school community, Richmond, Henrico, Chesterfield. Are there some limits in terms of feasibility, Doctor, in terms of desegregation? There may be black children in Nebraska and some in New York, but there are some limits, aren't there? A Yes.

Q You were asked to look at the proposal for the Richmond school community, is that correct? A That is right.

Q You were also asked, Doctor, with respect to the Richmond system, the Richmond city limits. Under Plan III the perception of schools or the identifiability of schools within the Richmond city limits, is there any way, really, Doctor, in terms of the factual situation here in Richmond with its school community racial composition that you can really look at Richmond and close out those other areas? A I don't see how you can separate by any kind of artificial barriers as far as schools and school attendance are concerned and consider them separately, as separately [G-214] desirable educational organizations.

Q And as a practical matter, Doctor, anyone looking at the schools in the City of Richmond under Plan III will have

the knowledge of the existence of a pattern of racially proportioned schools immediately surrounding it, will they not? A The whole Richmond school system would be racially identifiable by some of the components within it, as would the counter reflex of the county school districts outside which would retain their white predominance.

* * *

Recross Examination

By Mr. Gravatt:

[G-218] * * *

Q Dr. Gross, if it should develop in this case as a fact that the general population situation that exists in the Richmond metropolitan area is generally characteristic of the metropolitan areas all over the United States, that is that the central city has a predominantly black core or core area surrounded by a ring of generally very small percentages of black area, would you adopt and espouse this plan and this program to be applied to all of the central cities so situated? A I would advise the earnest exploration of this technique of restricting either by consolidation or realignment so as to form new districts in the case of perhaps extremely large cities, or perhaps just expanding boundaries as a very promising tool for solving this grievous American problem. It is not a southern problem, it is an American problem, sir.

* * *

[G-223] ROBERT T. GREEN

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

District Court Proceedings of August 24, 1971

Direct Examination

By Mr. Lucas:

Q State your full name and occupation. A Robert T. Green, Special Assistant in the State Department of Education for Desegregation.

Q How long have you held that position? A Since February 1, 1971.

You were employed pursuant to a particular federal program administered through the State Department of Education? A Yes, sir, Title IV under the Civil Rights Act of 1964.

Q Are you the first employee in the Title IV unit of the State Department of Education? A Yes, I am.

Q Doctor, how long have Title IV funds been available to the state to assist school districts in the process of desegregation? A Approximately five years.

Q This is the first time that Virginia has applied for such funds, to your knowledge? [G-224] A The first time for the State Department of Education.

Q Was there anyone in the State Department of Education who had functions similar to those which you now perform whose files you may have inherited, whose staff you may have taken? A It is my understanding that Mr. Harry Elmore.

Q What was his function, sir? A To assist school divisions in complying with the directives from Title VI and the Federal Courts.

* * *

[H-4] PROCEEDINGS

(August 25, 1971) (Wednesday at 10 o'clock)

The Clerk: Civil Action 3353-R, Carolyn Bradley, et al., versus the City School Board of the City of Richmond, Virginia, et al.

Continued from yesterday.

The Court: All right, gentlemen, call your next witness, Mr. Lucas.

Mr. Lucas: Mr. Hillary Jones.

The Court: Good morning, gentlemen.

HILLARY H. JONES, JR.

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lucas:

Q Give us your full name and occupation, please, sir. A Hillary H. Jones, Jr. I am an attorney at law.

Q Do you hold any position with the Commonwealth of Virginia? A I am a member of the State Board of Education.

Q How long have you held that position? A Approximately two and a half years.

[H-5] * * *

Q Are you familiar with the relief sought by the plaintiffs and similar relief sought by the School Board for the City of Richmond with respect to the organization of public

schools in the adoption of a desegregation plan for the entire Richmond school community? A I am familiar with in general, the relief sought, yes.

Q Mr. Jones, what is your position with regard [H-6] to the proper role for a State Board of Education in a state such as Virginia with its history of state constitutionally imposed segregation in its public schools, and indeed all other walks of life?

What function do you think the State Board should play in changing this pattern of school segregation? A The State Board of Education, in my judgment, is the duly constituted agency to provide leadership in all matters of public education for the entire State of Virginia.

It is my belief that it is the Board's function and it has been my individual position, that this is where we are trying to head. And the leadership will come in various and sundry forms in any matters brought before the Board. And the Board itself, I think, is called upon to take positive positions of leadership to provide the best quality education for every person in the State of Virginia.

Q As an individual Board member, and not expressing the opinion of the Board or the position of the Board, would you support actions by the State Board to assist a Richmond school community, that is the City of Richmond, Chesterfield, and Henrico, in developing a plan of desegregation which would cross the political boundaries and make it one educational system under a desegregation plan? A Your question is would I?

[H-7] The Court: Just a moment.

Mr. Gravatt: I note an exception to the gentleman's opinion, personal opinion. He says he does not speak for the Board.

The Court: All right.
Well, he is not asking him that.

Mr. Gravatt: He is not qualified as an expert, not listed as an expert.

The Court: Overruled.
Go ahead.
Do you understand the question, Mr. Jones?

The Witness: I would ask Mr. Lucas a question in response, if I might.
Do I understand you are asking me my personal opinion as to whether or not I as an individual, as a member of the Board, would support in effect a consolidated plan for this area?

By Mr. Lucas:
Q Yes, sir, actions by the State Board to assist them in developing such a desegregation plan. A Yes, I would support it.

[H-10] * * *

WALTER CAMPBELL

was called as a witness and, having been first duly sworn, was examined and testified on [H-11] his oath as follows:

Direct Examination

By Mr. Lucas:
Q What is your occupation, Dr. Campbell? A Division Superintendent, Henrico County Schools.

Q How long have you held that position, sir? A Since July 1, 1969.

H-37] * * *

Q These are excerpts from the Henrico County School oard minutes, . . .

H-52] * * *

Q Would you read page 101 at the top, please, sir, the rst paragraph? A "The Board requested the Superinndent to discuss with Richmond school officials the feasiility of some Negro students in the eastern section of enrico attending high school in the City."

Q At that time the schools in both Richmond and enrico cooperated on the racially separate basis, is that rrect? A I do not know.

Q Well, you were in Virginia at that time, were [H-53] ou, sir? A Yes.

Q In general that was true of the schools in the State Virginia? A The year is '57, is that right?

Q Yes, sir. A I believe so, generally.

H-56] * * *

Q Do children in Henrico County live nearer to certain the Richmond schools than they do to Henrico County hools? A Offhand I can't answer that because that ssumes that there is no transportation problem, and we are it up quite a bit by interstates and major highways which ould have a big effect on answering that question.

[H-57] Q Have you studied this? Have you studied ie maps? Have you studied the distances between the hools to see if certain schools were not closer to Richmond, rtain children were not closer to Richmond City schools

than they were to Henrico County schools? A Have I studied?

Q Yes. A I don't know why I would study it.

Q From the contiguous border that you have with the City of Richmond you actually have some Richmond schools located in Henrico County and do you not have Henrico County children that live closer to those schools than they do to your schools? A That is possible, but remember there was an interstate between the two.

Q All the way along the boundary? A Well, of the one situation that I happen to know about, I would say that is true.

Q In one situation? A Yes, sir.

Q What about the City of Richmond children, do they live closer to some Henrico County schools than they do perhaps to Richmond Schools? A I suppose that the opposite would be true [H-58] because in building the interstate the interstate more or less crosses back and forth over both jurisdictions. Maybe that would compare it.

[H-66] * * *

Q What do you call a desegregated school? How do you define it? A I don't know actually what you would say is a desegregated school because in Henrico we look on all our schools as schools and we don't consider them to be black schools or white schools. We are unitary nonracial [H-67] and it seems like there is a lot of different interpretations of when a school is desegregated.

Q Let's put some meaning into those words you used. A school is 100 percent black and it is in your school system.

It is a unitary nonracial school system? A If it would be accepted by HEW I suppose that it would be considered that.

Q That is your opinion as a professional educator? A I said if it would be accepted. I didn't say it would be.

Q I am asking you, is it your position as a professional educator, let's leave HEW out of it, that that is a desegregated school or that your school system is an integrated school system? A I think you would have to take into consideration the faculty too.

Q All right.

Suppose you have 40 percent black and your faculty, when it is only eight percent in the system, you have 95 percent of your pupils black in a school. Is that school a segregated school or is it a part of a unitary integrated system? A 95 percent?

[H-68] Q Yes. A It can be part of a unitary nonracial, yes.

Q And that is true if your black population in the entire system is only eight or nine percent? A Yes. It could be.

Q What if you had 15 schools which were 95 to 100 percent black and your population in your system indicated that it was only eight or nine percent black and all of your black students or all but a small handful were assigned to those schools. Could that still be a unitary integrated system in your opinion? A You have lost me there.

Q All right.

You have got a school system whose total population is only eight or nine percent black.

Do you follow me that far? A Talking about Henrico?

Q Talking about a hypothetical school system. I want to know what your opinions are. You have got 10 or 15 schools in that school system which are 95 to 100 percent black. Those schools contain almost all of the black students in the entire system. Can you still say that that school is a unitary integrated system? A I don't think that would be possible to have [H-69] that low a percentage of Negro and have that many schools with that high a percentage.

Q Well, you would have to have a large school system, but you could have—suppose you had a school system of 104,000 and almost all of the black students in that system attended schools that were 65 to 70 percent black and almost all of the whites attended schools that were 80 to 100 percent white. Would that be an integrated school system? A I think it would depend upon what would be done in the schools, what is being done by the school division itself as to whether an interpretation—I am talking to you along educational terms, Mr. Lucas.

Q That is what I want. I want your opinions. You are not a lawyer. A I have seen experts, white and black, visit a school that is 50 percent black and 50 percent white. When they leave they have been asked the question now, which way was that school, was it white or black. The white generally thought it was black and the black generally thought it was white.

Q Depends upon the perceptions of people, doesn't it? A That's right.

Q Let's go back to my question I asked you. A [H-70] school system of 104,000 and almost all of the black students in schools 65 to 70 percent black. The rest white in schools 80 to 100 percent white and with the population ratio in

that entire school system of about 33 percent black. Can that school system, in your opinion as an educator, is that school system an integrated school system? A I think what would be more important would be what the children and the parent might think.

Q I want to know what you think as an educator. Is that an integrated school system? A A school that is 35 percent white and 65—

Q A system is 35 percent white or 33 percent white, almost every black student in that system is in a school that is 65 to 70 percent black, and the rest of the schools are 80 percent white. 80 to 100 percent white. Is that an integrated unitary system in your opinion by educational standards? Let's not talk about HEW or the courts. A Yes, I think that, I reiterate again, it could be.

Q Do you think in Virginia with its history of state-imposed segregation, it was part of the law, part of the Constitution of the State of Virginia, wasn't it? [H-71] A Yes. But that is going back. There has been a lot that has happened since then.

Q Well, 1965 they had segregated offices even in the State Board of Education. That is not that far back, is it? A Well, I don't know whether that was—I don't know the reason for that, but I am pointing out that a lot of change has occurred in recent years.

Q But in Virginia— A Yes.

Q —with its history— A Yes.

Q —would you say that a school system like that would be a unitary system? Does it—let me go back. A You are asking the same question again, aren't you?

Q I asked you hypothetically before. I am asking you now in the context of the State of Virginia with its history of state-imposed segregation, is your answer the same? A I can't answer in terms of the history of Virginia. I can only answer in terms of the present.

Q Can you escape the past?

Doctor, in dealing with children with education, [H-72] dealing with parents, can you escape the past? A I think if we forgot about a lot about the past we would be a lot better off and could deal with the few—

Q Can people forget about it that easily, or isn't this something that you have to deal with? A I think the young people, boys and girls, believe what we adults tell them and if we are constantly dwelling upon the aspects of it it does influence them, but if we talk more positively and talk in terms of the need of the future we might be better off.

Q If adults talk about spreading Richmond Negroes to the good white counties, that is bad, isn't it? A That is bad?

Q Do you agree that that is bad? A I don't think it is educationally sound.

Q Would you say a school is desegregated when it had say 500 whites and two blacks in it? A I believe that that has been a legal interpretation here.

Q No. A Talking about educationally?

Q Yes. A Well, it is the same question, I believe you [H-73] have been asking me several times.

Q I am asking you about one school. A All right.

Q I want your opinion as an educator. A What is in

back of that question that bothers me is the implication that because something is all-black it is bad.

Q That is not my implication. That may be yours. I am asking you if— A I don't know.

Q I am asking you if that school with 500 black and two white is a desegregated school?

The Court: It is a simple question, Dr. Campbell. Surely you can answer that one way or the other. What is your answer?

The Witness: Yes, if it has any mixture of race in it I believe it is desegregated.

[H-84] * * *

Cross-Examination

By Mr. O'Brion:

[H-86] * * *

Q In fact I believe some schools of Henrico County bear the name of Virginia Randolph, do they not? A Well, at one time there was a Virginia Randolph High School and a Virginia Randolph Elementary School on the same campus. Those buildings have been redesignated as the Virginia Randolph Educational Centers. I emphasize the S because we have a number of programs going on there. This facility is practically all being used by these facilities including a museum honoring Virginia Randolph.

Q These are the same schools Mr. Adams described in his cooperative education testimony? A Yes. Some of these programs are there as well as programs that we operate by ourselves.

Q But up to 1969 I believe that that school [H-87] served all of the high school Negro children in Henrico County, did it not? A Up to what year?

Q Wasn't it closed in 1969 and reopened in— A Yes, it was closed at the end of the school year, at the end of '68-'69, year before I arrived.

Q And was it your understanding that the attendance area for Virginia Randolph High School included all of Henrico County? A Well, at that time I understand the enrollment had dwindled away in these schools, but it was very small since the children did have a choice at that time, you see. The schools were still operating under that plan.

Q I believe that choice is identical to Chesterfield County choice, that is the children could go to the nearest formerly all-white school if they lived in that area, or they could go to the nearest all-black school, formerly all-black school? A That was their choice.

Q And formerly all-black school for Henrico Negro children in grade eight to twelve meant Virginia Randolph, did it not? A I suspect it did when that was the only high school.

[H-97] * * *

Q Do you agree with testimony that you have heard earlier this week and again last week that once a school becomes around 50 percent black it rapidly becomes 80 or 90 percent black? A I believe that has been largely the facts of the situation.

Q Do you agree with that? A It is not a necessity of agreeing with it. I think it is a question of what the facts are.

Q Do you think it happens? A To my knowledge it loes.

Q Would your knowledge be based on Central Gardens? A Yes. I think that is part of the knowledge. That would oe only one incident.

[H-98] Q Do you know what the racial composition of Central Gardens was in 1964-'65? A I believe at that ime it was all white.

Q Do you know what the racial composition of Central Gardens was in 1966-'67? A I would have to check it, out there was a beginning to be a change in the racial pattern of the school at that time as I recall.

Q Would you accept my figures for '66-'67 which I ust got off Exhibit 116 that it was 62.6 percent black in 9— A I imagine so.

Q And in 1967-'68 would you agree that it was around 8 percent black? A I think that would be about right.

Q And in 1968-'69 would you agree it was around 91 ercent? A Yes, probably so.

Q And for the first year you were on the scene would ou agree it was around 95 percent black? A Yes, very lose to it.

Q And this past year you would agree it was 96.2 per-ent black? A 95 to 96, depending upon just when you ake [H-99] the statistic.

H-100] * * *

Q J. L. Adams Elementary School, Dr. Campbell, which ou have identified for the same years that we talked about

Central Gardens had racial composition for the years it was open, I believe, J. L. Adams opened new in '67-'68, didn't it? A Yes, I believe that is right.

Q Had 2.6 percent black and 3.5 percent black in '68 and '69 and 13.7 percent black in '69-'70.

Around 14 percent last year.

The other school, Glen Lea, I believe Glen Lea has been all white during those same five years. Would you agree with that basically? A I believe that is correct. Well, here it shows two.

Q Two one-hundredths of one percent? A No. Two Negroes enrolled in September. See, [H-101] children come and go. What you might say at one time would be all white the next day it could enroll members of the Negro community. So I can't say arbitrarily just whatever date you are using.

Q Would you agree that Glen Lea was all white for the four years preceding this past year to your knowledge? A I can't say to my knowledge that it was.

Q Again Exhibit 116, if these figures are taken from that exhibit and they reflect that Glen Lea was all white for the four years preceding this one, would you generally agree with that? A Yes, I would.

Q Highland Springs, which you identified, had a 0.7 percent in '66 and 0.4 percent in '67, .7 percent in '68 and 4.7 percent in '69 and .4 last year percent black.

Now, the Ratcliffe School which we have been through for some years was— A There was a reason for that decline there in the Highland Springs Elementary with the reopening of the Fair Oaks School. It shifted.

Q Alleviated some of that? A Yes. Shifted the population.

[H-102] Q And we have been through Ratcliffe.

Now, the distance between Central Gardens and J. L. Adams is approximately 3.4 miles, would you agree with that? A Pardon me?

Q Adams and Central Gardens? A I suspect that is about right, yes.

Q Now, if distance between Central Gardens and Glen Lea is 2.4 miles, would you agree with that? A That I think is probably correct.

Q And if the distance between Central Gardens and Highland Springs is 8.5 miles would you agree with that? A I guess so.

Q And Ratcliffe we have already agreed, you said was about a mile or so apart from Central Gardens? A Yes.

I am having to assume these are fairly correct because I don't know whether the mileages are taken the way you drive or by a cross—

Q Would you please explain the proposed desegregation proposal for Central Gardens High School for the coming school year? A Central Gardens Elementary?

Q Elementary. I am sorry [H-103] A Elementary school?

May I say in the beginning that we work very closely with HEW on that. With Dr. Haddock one year and Mr. Wingo another year. And the school has been converted into what we consider to be the beginning of a middle school. We are a little short of middle schools in that area. We don't know when we can get another bond referendum ap-

proved to construct the two middle schools that we will need in the next couple of years. But then the population was, of Central Gardens, was sent to what would be the feeder schools in the circle. These figures that you refer to represent schools that are in somewhat a radius around this potential middle school although next year it would house only the sixth graders.

Q Is it correct that the children in grades one through five presently in the Central Gardens attendance zones have been now subdivided, if you will, and they will go to those four schools which we described on the map in grades one through five? A Yes.

Q Is it true that the sixth graders from those schools which we listed, J. L. Adams and Highland Springs, Glen Lea, Ratcliffe, will all come into Central Gardens, that will be the sixth grade is housed there this coming year? [H-104] A Right.

Q Do you know what the resultant racial composition will be in all five of the schools, Dr. Campbell? A I think it is pretty close to 30 percent.

Q It is between 20 and 40 percent, as a matter of fact, isn't it? A No. I would say it was almost 30 percent.

Q Which is darn close to the middle between 20 and 40 percent, isn't it? A Yes.

Q Did you consider pairing Central Gardens with Ratcliffe? A No. No, we didn't.

Q Why not? A Well, maybe I should rephrase that. Are you saying did we consider? We considered a lot of things.

Q If you paired Central Gardens with Ratcliffe— A We didn't consider it to be feasible.

Q Would you get a school that would be 62 percent black if you paired Central Gardens with Ratcliffe? Is that correct? A I don't know what the percentage would be.

Q Roughly that? [H-105] A Yes, I would think so because of the sizes of the school that are quite different.

Q Why didn't you pair Central Gardens and Ratcliffe? A Central Gardens—because we didn't think that was educationally feasible and didn't take into consideration our long-range needs.

Q If you paired Central Gardens with Adams you would get a school that is 54 percent black. Why did you not pair Central Gardens with J. L. Adams? A Again we were looking at a long-range solution and not the immediate.

Q If you made a cluster of Glen Lea, Ratcliffe, and Central Gardens you would obtain a school that was 44.5 percent black. Did you consider this? A We considered, I think every alternative possible, and this one that we chose is what we felt was the most educationally feasible. It was the one that the Desegregation Institute at the University of Virginia felt was the best plan.

[H-106] * * *

Q Did you receive such a report from the Desegregation Department at the University of Virginia? A I don't recall that we ever talked about race in it. I think we talked only about the educational advantages.

Q And the educational advantages resulted in around 30 percent black in each of those schools? [H-107] A It

resulted in what we felt was a situation that would provide the best education for these boys and girls, again looking to the long-range view.

Q Now, the children in grades K through five in Central Gardens do not go to the school nearest them under this plan, do they? A I don't know. Probably the same statement might be made about other children too, but this, to us, is a neighborhood area in which the children are still within the area. They are not going by any school to go anywhere else. As I said it is a feeder zone established just like you have to establish for any middle school. You know your middle school had to take into consideration more than one elementary school.

Q So that the neighborhood for children living in the present Central Gardens area in grades K through five goes to 8.3 miles out to Highland Springs? A How far?

Q You agreed with me as to the distances between Central Gardens and Highland Springs at 8.3 miles? A Well, there are children in the—it is all within what I have just described.

Q All within the expanded neighborhood. They previously went to school at Central Gardens, in that [H-108] attendance zone, did they not? A Yes.

Q Now they are going to Highland Springs and among the three others and the distances which we have described? A Yes. And it works. The others, the sixth graders go there.

Q Now, the sixth graders are a good bit older than are the children in grades one through five, are they not? A Yes.

Q Now, all the children in grades one through five in Central Gardens for the most part were black, were they not? A Yes.

Q So the younger blacks will be getting on the buses and going out to these schools which we have described, is that correct, and the sixth graders who are predominantly white in the schools which we have talked about will be coming into Central Gardens? A They are going out to these schools that would serve this neighborhood middle school.

Q Do you suspect that this will give you stability in the racial compositions of these schools? [H-109] A I would like to think so.

[H-115] * * *

JOHN HOWARD, JR.

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lucas:

Q State your full name and occupation, please, sir. A John Howard, Jr., subdivision appraiser for HUD area FHA Office, Richmond, Virginia.

Q Mr. Howard, previously Mr. Mason, the Director of the office had been given a subpoena duces tecum to produce certain records here, is that correct? A That's right. Correct.

Q And he designated someone else from your office to appear and produce those records? [H-116] A He designated me.

Q Had he designated another gentleman who was taken ill this morning? A Right. Mr. Coy Morell who is the Deputy Director was to come. Of course I was to come with him, but he was to come. He came to the office this morning, was taken ill, was taken back home, got some medication from the doctor and was instructed to plan on spending at least the rest of this week in bed resting.

Q And you have been authorized by the agency to produce certain documents here pursuant to that subpoena? A I have.

Q I show you what has been marked as Plaintiffs' Exhibit 127 entitled Chesterfield County and Henrico County Subdivisions indicating its source, records, Federal Housing Administration, Department of Housing and Urban Development, also a covenant books from Lawyer's Title, Incorporated.

I ask you to examine these items, one through nine, and tell me if you can identify them? A You mean identify them as having come from our files?

Q Yes, sir. A Yes, sir.

[H-117] Q Do you have a copy of that document with you, sir? A Yes, sir, I do.

Q May I have the other one back?

Did you identify the first subdivision copy that you have there? I believe it is Green Acres.

[H-120] * * *

Q All right. Would you read from the covenant of Green Acres subdivision, item number ten?

Mr. Gravatt: May I inquire where the subdivision is?

The Court: It says here southwest corner of Belt Boulevard and Berkeley Road, Chesterfield County.

* * *

The Witness: "Part 10. No persons of any race other than the Caucasian race shall use or occupy any building on any lot except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled within the owner or tenant."

By Mr. Lucas:

Q All right, sir.

On the face of that does it appear, the first [H-121] page, 1948, and can you tell me whether or not this was a FHA subdivision as reflected by your files?

[H-122] * * *

Q On the covenant itself does it indicate January 1, 1973? A Right.

Q And this is a FHA subdivision as reflected [H-123] by your records? A Yes, it is.

[H-127] * * *

Q Have you found that? A Forest View Heights?

Q Yes. A Yes.

Q Chesterfield County. Does it show conditions and restrictions applicable to Forest View Heights a plan of which is recorded in plat book eight, pages 20 and 21? A It does, yes.

Q All right, sir.

Would you read the restriction number one? A "The said parties—

Q No. Number one. A I am sorry.

[H-128] "Neither the said land nor any part thereof, nor any buildings, house or structure that may be erected thereon shall be sold, conveyed, leased, rented or otherwise disposed of to any other than white persons as the owners or tenants thereof."

Q And is this also filed on a FHA subdivision? A It was filed with an FHA subdivision, FHA participated in, yes.

Q All right.

Cavalier Court.

[H-130] * * *

Q Mr. Howard, were you also asked to produce certain excerpts from the FHA underwriting manual, 1935? A Yes, sir.

Q When did they first become available to you, sir? A This morning.

Q Were they brought here from Philadelphia by the HUD officials? A Yes, sir.

Mr. Lucas: Your Honor, I would like to have marked as Plaintiffs' Exhibit 128, and I do not have copies of this document because we were just furnished them this morning—

The Court: How voluminous is it?

Mr. Lucas: Not very. We intend to make copies.

By Mr. Lucas:

Q Directing your attention to paragraph 309 under the heading "Protections From Adverse Influences." Would you

read that, please, sir? [H-131] A "The matters to be considered in rating this feature are the factors which afford protection to and preservation of the desirable characteristics of residential neighborhoods. Numerous influences can so change these characteristics that the neighborhood will become entirely undesirable for residential purposes. Protection aaginst some adverse influences is obtained by the existence and enforcement of proper zoning regulations and appropriate deed restrictions."

Q All right, sir. Stopping there and turning to subsection 310, if you would read that, please. A "310. Important among adverse influences besides those mentioned above are the following: Infiltration of inharmonious racial or nationality groups; infiltration of business or commercial development or use; the presence of smoke, odors, fog; proximity to noisy or high-speed traffic arteries, to railroads, and to nuisances."

Q All right, sir.

Would you read section 312? A "312. All mortgages on properties in neighborhoods protected against the occurrence or development of unfavorable influences, to the extent that such protection is possible, will obtain a high rating of this feature. The absence of protective measures will result in low rating or, [H-132] possibly in rejection of the case."

Q All right.

Directing your attention to paragraph 315 under the heading "Appeal of the Neighborhood." Would you read that paragraph? A All right.

"315. The appeal of a residential neighborhood results from the general condition and attractiveness of the properties located therein; the kind and social status of the in-

habitants; nearness to commercial centers and facilities for religious worship and for recreation; amusement, and sports, such as swimming, boating, riding, tennis, and golf; the provision of adequate police and fire protection; proper maintenance of the public streets and other public improvements; the percentage of owner occupancy; the degree to which the neighborhood is built up; and other similar factors."

Q Directing your attention to paragraph 330 beginning with, "When this condition is found to exist." A "When this condition is found to exist and the area has been properly planned so that it fits in harmoniously with the adjacent neighborhoods; when fullest advantage has been taken of available means to protect the area against adverse influences and to insure that it will [H-133] develop into a homogeneous residential district, possessing strong appeal to the class of persons expected to desire accommodations in it, a high neighborhood rating will be warranted. The minimum requirements outlined in circular number five must always be observed."

Q Directing your attention to the section entitled "Rating of Location," subheading is "Protection From Adverse Influences," would you read section 228? A Section 228. "Deed restrictions are apt to prove more effective than a zoning ordinance in providing protection from adverse influences. Where the same deed restrictions apply over a broad area and where these restrictions relate to types of stuctures, use to which improvements may be put, and racial occupancy, a favorable condition is apt to exist."

Q All right, sir. Directing your attention to the paragraph 229 beginning with, "Usually the protection against." A "Usually the protection against adverse influences af-

forded by these means include prevention of the infiltration of business and industrial uses, lower class occupancy, and inharmonious racial groups."

Q All right, sir.

Turn back a page, if you will, and tell me [H-134] if the heading indicates that this is from the 1936 manual rather than the 1935, as the previous one. A Right. This is from, as indicated here, from the 1936 manual, part two.

Q Directing your attention to section 266, would you read that, please? A 266. "The social class of the parents of children at the school will in many instances have a vital bearing. Thus, although physical surroundings of the neighborhood area may be favorable and conducive to enjoyable, pleasant living in its location, if the children of people living in such an area are compelled to attend school where the majority or a goodly number of the pupils represent a far lower level of society or an incompatible racial element, the neighborhood under consideration will prove far less stable and desirable than if this condition did not exist. In such an instance it might well be that for the payment of a fee children of this area could attend another school with pupils of their same social class. The question for the Valuator to determine is the effect created by the necessity for making this payment upon the occupants of the location. Under any condition the rating could not be as favorable as if the desirable school were available without additional cost. In [H-135] many instances where a school has earned a prestige through the class of pupils attending, it will be found that such prestige will be a vital element in maintaining the desirability of the entire area comprising the school district."

Q All right.

Directing your attention, sir to 284, 284(2). "Carefully complied zoning regulations are the most effective— A "Effective because they not only exercise control over the subject property but also over the surrounding area. However, they are seldom complete enough to assure a homogeneous and harmonious neighborhood."

Q 284(3). A "Recorded deed restrictions should strengthen and supplement zoning ordinances and to be really effective should include the provisions listed below. The restrictions should be recorded with the deed and should run for a period of at least 20 years. Recommended restrictions include the following:"

Q Would you read G and H in those restrictions? A "Prohibition of the occupancy of the properties except by the race for which they are intended.

"H, appropriate provisions for enforcement."

[H-136] Q All right.

Directing your attention to section 935 in the manual of 1938. A All right. 1938 section two, paragraph 935.

Q Starting with, "Natural or artificially established." A "Natural or artificially established barriers will prove effective in protecting a neighborhood and the locations within it from adverse influences. Usually the protection from adverse influences afforded by these means includes prevention of the infiltration of business and industrial uses, lower class occupancy, and inharmonious racial groups."

Q Section 937, "Quality of Neighboring Development." Would you read from, "If a neighborhood is to retain stability"? A "If a neighborhood is to—

Q "To retain— A Wait a minute. I am looking at the wrong one I think.

Q 937. A 937. "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes. A [H-137] change in social or racial occupancy generally contributes to instability and a decline in values."

Q Would you read section 951? "Quality and Accessibility of Schools." A "951. Quality and Accessibility of Schools. When considering the question of schools, distances to the schools should be related to the public or private means of transportation available from the location to the schools. The social class of the parents of children at the school will in many instances have a direct bearing. Thus, physical surroundings of a neighborhood area may be favorable and conducive to enjoyable, pleasant living in its location. However, if the children of people living in such an area are compelled to attend school where the majority or a considerable number of the pupils represent a far lower level of society or an incompatible racial element, the neighborhood under consideration will prove far less stable and desirable than if this condition did not exist. Frequently, upon payment of a fee, children in such an area could attend another school with pupils of their same social class. However, desirability of the neighborhood, when compared with competitive locations, might be adversely affected by the additional expense. [H-138] In many instances where a school has earned a prestige through the quality of instruction and adequacy of facilities, it will be found that such attributes will be an element in maintaining the desirability of the entire area comprising the school district. In cases where schools are not immediately present, consideration is given to convenience and cost of required transportation."

Q All right, sir.

Have you brought with you pursuant to the subpoena a document constituting the report to the Congress which is required by the National Housing Act, Housing and Urban Development Act of 1968, report of the President to Congress? A Yes, sir.

Q What is the date of that, sir? A All right. Let's see.

Q Look at the letter of transmittal on the first one.

The Court: Lead the witness, Mr. Lucas.

By Mr. Lucas:

Q I show you Plaintiffs' Exhibit marked 126 and ask you to examine the letter of transmittal and give me the date, please. [H-139] A Oh. "The White House, June 29, 1971."

Q All right.

Directing your attention, sir, to page 26 of the report. Would you read the first full paragraph?

The Court: Now, tell me what it represents? A report by the President to Congress?

Mr. Lucas: As required by statute under the National Housing Act.

The Court: All right.

The Witness: "Residential separation of racial minorities was, and is, another characteristic of the social environment which has been influenced by federal housing policy. Until 1949, FHA officially sanctioned and perpetuated community patterns of residential separation based on race by refusing to insure mortgages in neighborhoods not racially homogeneous. The effects of this policy have persisted for

many years after its reversal and are still evident in metropolitan areas today."

By Mr. Lucas:

Q Thank you.

Would you step to the map, please, sir?

Pursuant to subpoena did your office compile and provide certain information as to the location of federally-assisted housing, public housing, and FHA projects [H-140] in the Richmond community A Yes, we did.

Q All right, sir.

Would you explain for the record—may I identify it? This morning we identified the base map as Plaintiffs' Exhibit 98. The overlay on that, Your Honor is 98-A, which is simply a reproduction of the zone under the proposed community desegregation plan.

130-A is the exhibit that the witness will refer to at this time.

Would you explain the legend on the exhibit and point out examples of the particular projects?

The Court: Just a moment, please.

Would that be contained in this brochure that somebody put up here? A small copy of that map?

Mr. Lucas: No, sir.

The Court: All right.

All right. I have the legend.

The Witness: Well, these round ones here indicate projects, federally-assisted projects, that were started prior to January 1, 1970.

By Mr. Lucas:

Q Those would be public housing projects? A Public housing projects, right.

[H-141] The second date here would be January 1, 1970, through June 30, 1970.

Q Is that projects started? A They are projects started, right.

Q All right. A Then the second one here with the circle and the flag and the square and the flag here would be the time element. There is July 1, 1970, to December 31, 1970.

Until the last column, that would represent the latest and most current, which would represent January 1, 1971, through June 30, 1971.

Q And those projects, public housing not administered by the Federal Housing Administration, is that right? A They are located as shown on the map in these areas by these round dark or black dots.

Q Are most of those located, sir, in areas which, on the map, are shown as 70 to 100 percent black, if you look at the red mark on the legend and on the base map? A That is correct.

Q All right, sir.

Now, the next line on the legend, does that deal with FHA projects? [H-142] A This line here?

Q Yes, sir. A Oh, yes, they are FHA projects or HUD-FHA.

Q Is there a reference to section 221(d)(3)? Can you tell generally what that is? A It is a title to a multi-family processing thing where there is a mortgage, or in other words advanced mortgage project, advances money to the builder.

Q And how is the 221(d)(3) project indicated on the legend? Is that a black square? A By the black square, right.

Q Can you tell us on the map where those are located? A They are located, let's see, we will start over here. There is one over here.

Q The solid black? A Only one which is right here, very near to the center.

Q Is that in a red area? A That is in a red area also.

Q Is that one above? A And one right up above it, the same thing. Yes.

Q All right.

[H-143] Are those the rent supplement projects? A Yes, they are.

Q All right, sir.

The white box near that deals with the FHA-assisted programs for that particular January 1, 1970, through June, 1970, in a similar pattern to the public housing, is that correct? A Yes, it is.

Q Public housing is the round circles and the squares are the FHA-insured or guaranteed projects? A That is correct.

Q Could we put up the other overlay?

All right, sir, before we go into this exhibit, what is the number on there, 129-A, would you look at Plaintiffs' Exhibit 130 which is statistics with respect to the FHA projects.

Do you have a copy of that that shows the squares and the circles? A Is this what you mean?

Q Yes, sir. A Yes.

Q Address the Court, please, sir. A This is it.

Q Can you tell me as to the two black squares [H-144] how many units there are in each?

[H-145] * * *

Q Number one is the Fair Hills Apartment. What does it show for the number of units, and give us the racial occupancy if you will? A The number of units is 224.

Q Excuse me.
Turn around and address the Court if you will.

The Court: Do you need the witness standing there now?

Mr. Lucas: He is going to step to the map in a moment, Your Honor.

The Witness: Well, the number of units would be 224, minority occupancy is 223, and white is one.

By Mr. Lucas:
Q Jefferson Townhouse? A That would be 278 units and 276 is minority and two white.

Q Now, the Town and Country Apartments which is one of the white squares. How many units do you have there? A 202 units.

Q Did your office determine or make efforts to [H-146] determine the racial occupancy of that particular project?

* * *

[Q] Now, directing your attention to Exhibit 127-A. Do you have a list of the projects that are shown on that exhibit, Plaintiffs' Exhibit 129, sir, Annual Rental Housing Occupancy Report, dated March, 1970? A Yes, sir, I do.

Q Do you have with you the supporting documents from which that information was taken? A That is correct.

Q And what is the title of the documents from which this summary was taken? A The Rental Housing Occupancy Survey.

[H-147] Q FHA form number? A Federal Housing Administration.

Q Form number appear on that? A Form number, here you go, form number 2474 revised 1/68.

Q This is the regular housing occupancy survey form? A Yes, sir.

Q Used by the agency? A Yes, sir.

Q Have you compared the base data with the statistical summary that appeared on Plaintiffs' Exhibit 129? A Yes, sir. I have looked at it.

Q Is it correct? A Yes, it is.

Q All right.

Would you explain how this information on Plaintiffs' Exhibit 129 is reflected on the overlay, 129-A? A I hope so.

Q Starting with number one can you locate it on the overlay?

The Court: Mulberry Park, is it?

The Witness: Number one is right here.

[H-148] By Mr. Lucas:

Q All right.

And the W stands for the race, is that correct? A Right.

Q That shows the approximate location. It is not pinpointed because of the size of the square, is that correct? A That is correct.

Q Is that same pattern showing white or black followed throughout? In other words, it has one showing the location? A Right.

Q And the race shown by a W or B, is that correct? A Right.

Q You may resume your seat.

In the right-hand column of Plaintiffs' Exhibit 129, does it reflect the racial occupancy for each of those projects to the extent the information was available in your files? A That's right. Yes.

Q No, sir, the summary. A The summary?

[H-149] Q The summary sheet, the typed list showing all of them.

If you will, sir, look at mine. A Yes, it does reflect the racial differences or numbered differences anyway.

Q Do you know whether or not, sir, in your work with the Federal Housing Administration a workable program is required in order to be able to participate in certain federal programs? A That is correct, sir.

Q And does Henrico County or Chesterfield County to your knowledge have such a workable program? A To my knowledge, no.

Q The rent supplement program, sir, does it require a special designation in order for the FHA to authorize a rent

supplement program or rent supplement project in a particular political subdivision? A Yes.

Q And may that appear as part of a workable program? A It may very well, yes.

Q And is there another way if a county does not have a workable program by which this approval can be obtained to enable you to place a rent supplement project? [H-150] A No, not to my knowledge, no.

Q Can the governing body of an appropriate political subdivision authorize it by special resolution? A By special resolution it could, yes.

Q You must have that before you could have a rent supplement program in that area, is that correct? A That's right. Yes.

Q To your knowledge does either Henrico County or Chesterfield County have such a resolution authorizing participation in the program? A No, they do not. Not to my knowledge.

[H-151] * * *

[Q] I return to you your copy of the covenants, sir. Would you check and see if we have got them arranged right. Is the first one you have Bon Air? A That's right.

[H-152] * * *

Q Would you read paragraph six in this particular covenant list? A "No part of said land shall be sold or leased [H-153] to any person not of the Caucasian race."

[H-154] * * *

Q Have you examined the documents which you have produced? A Yes, I have.

Q Are they all from the files of the Federal [H-155] Housing Administration indicating FHA subdivisions? A That is correct. Indicating FHA participation in them.

Q Insured subdivisions? A Some mortgages are in there.

Q All right, sir.

Do all of those that you have produced contain some form of restrictive covenants with respect to race? A Yes, they do.

[H-161] * * *

FREDERIC FAY

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lucas:

Q State your full name and occupation, please? A My name, is Frederic A. Fay. I am the Executive Director of the Richmond Redevelopment and Housing Authority.

Q Mr. Fay, a subpoena was issued for Mr. Sawyer, an employee of the Authority. Are you here in his stead? A Yes, sir.

Q Can you tell me when the Richmond Public Housing Authority was established? A The Richmond Redevelopment and Housing Authority, which is the official name, was activated in [H-162] October, 1940.

Q Under what authorization or legal authority was it established, sir? A In accordance with the provisions of Title 36 of the Code of Virginia as amended.

Q Was any special action by the General Assembly required to authorize the establishment of such an authority? A Of such an authority, yes, sir. But in the case of the Richmond Redevelopment and Housing Authority the action was taken by the Council of the City of Richmond.

Q And what is the relationship of your agency to any federal agency involved with housing? A The federal agencies serve as a banker to the low rent housing program. Our authority and powers come from the Commonwealth of which we are a political subdivision. Our authorization for undertakings come from the Richmond City Council and funds almost invariably are loan grant funds from the United States Department of Housing and Urban Development.

Q Do adequate standard housing—does adequate standard housing now exist to meet the needs of all low income families in the City of Richmond? A No, sir, it does not.

[H-163] Q Can you give me your estimate as a person concerned with this matter as to the size of that deficit? A Our estimates would be somewhat tentative because we are awaiting now the results of the 1970 decennial census, but the latest information to us available, which we have tried to bring up to date, indicates that about 23 percent of the housing supply of the City of Richmond, as it existed prior to annexation, is substandard.

Q What is the present size of the waiting list in Richmond for public housing? A About 1,600 families.

Q Can you tell me how many low income projects there are in the City of Richmond? A Eight at the present time.

Q Can you describe in general the racial composition of these projects? A They are predominantly black because our waiting list is predominantly black.

Q What is the racial characteristics of areas in which these projects are located? A Predominantly black in most cases. We schedule one development, Hillside Court, for construction as a white development. It may be recalled that prior to the Executive Order in 1962 under the requirements of the United States [H-164] Housing Authority and its successor agencies, it was required that developments be specified for a specific racial occupancy. Richmond only scheduled one development for white occupancy, and that was Hillside Court.

Q Mr. Sawyer at a previous hearing testified with respect to the admission policy and development over a several year period, as did another HUD official. Are you still following the three-choice policy that was testified, the tenant has three choices for the housing? A Yes. We are following that policy at the present time.

Q Are there adequate numbers of sites available to the City of Richmond to provide housing for persons who have been displaced, who are displaced by public action as well as for other low income people that now occupy substandard housing? A No, sir. The shortage of sites has been very critical for several years.

Q Have you made any efforts to acquire or obtain approval for new sites for low income housing during the past six months? A Yes, sir, we have.

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Q Have you made efforts while doing so to obtain sites which did not contain heavy concentrations of minorities [H-165] as required by HUD policy? A Yes, we have. We have in fact followed the procedure also permitted by HUD policy of attempting to balance sites.

Q What has been the result of your efforts, sir? A We proposed to the Council of the City of Richmond last November six locations embodying some 523 apartment units and of those only 112 were finally approved.

Q Where were those located? A Those were located in the present or the older City of Richmond City prior to annexation.

Q Located in predominantly black or white areas? A One was located—100 units was located in a predominantly black area in the lower end of Highland Park and the other was of 1,200 units that was located in predominantly white areas, although presently in transition, in South Richmond in the Overlook and Mimosa Avenue area.

Q What happened to you with respect to the other sites, the units, how were the units broken down, and tell us what happened to the sites? A I have forgotten the precise numbers, but there were—there was an additional 100 units of elderly housing proposed as a balancing location in the Cottrell Road area of the annexed portion of the City.

[H-166] Q That is old Chesterfield area? A Yes, sir.

Q By balancing do you mean it was located in an area that was predominantly white? A Located in an area that was predominantly white.

Q Was that project, the location, disapproved by the City Council? A Yes, sir. Disapproved by the City Council following violent citizen opposition.

Q All right, sir.

What happened after that as to the other projects? A The other three developments which included locations which were in predominantly white areas in the Snead Lane and Shaw Lane areas, and one existing apartment development off Broad Rock Road, the Broadman Park Apartments.

Q Was that a conversion? Purchased the project and converted to public housing? A Yes, sir. Those three developments comprised 311 apartment units, and they were all disapproved

Q And when did that take place, approximately, sir? A That took place in February and March of this [H-167] year.

Q Are there public housing authorities in Henrico and Chesterfield Counties? A No, sir, there are not.

Q Given the scarcity of sites in the City of Richmond would it be desirable for your Authority to obtain sites in these counties for low rent housing? A Yes, it would be most helpful.

Q Have you considered the possibility of obtaining sites in these areas? A We have discussed a number of times the possibility of approaching the two counties regarding some authorization to undertake development in the counties, but have not done so.

Q Why is that, sir? A Two reasons. One was that we saw almost no likelihood of success; secondly because

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of the existing tensions between the City and county groups.

Q What was the basis for seeing no reasonable possibility of success? A County officials had declared their position, particularly in the case of Chesterfield, in no uncertain terms. We saw no likelihood of success on that account.

Q Is there authority for the expansion—for [H-168] the construction of projects outside the city limits by the Richmond Public Housing Authority if it had the approval of the surrounding jurisdiction? A Yes. It is the state law that contemplates this possibility in two or three different ways.

Q And can the housing problem in this area be solved without the cooperation of these suburban counties? A I don't believe it can be solved without metropolitan cooperation.

Q Because of the difficulty you have had in terms of both acquiring new sites and rejections of sites in apparently predominantly white areas, is there any realistic possibility of location of governmental housing, disestablishing the existing pattern of residential racial segregation in the Richmond community? A If I understand your question, I don't think so.

Q Does the approval of projects only in changing areas or areas which are already predominantly black tend to reinforce the pattern of racial segregation? A Well, it usually does because the transitional areas that we are obliged to use at the present time under present conditions tend to resegregate themselves.

[H-169] * * *

Cross-Examination

By Mr. Gravatt:

Q Mr. Fay, did I understand you to say that the federal law originally required that the race of the persons to occupy federally-assisted housing projects had been specified? A Not the federal law but the federal regulations.

Q When was that policy abandoned? A With the issuance of the Executive Order by President Kennedy in 1962.

Q And now you say you are following what you call a free choice policy. What does that signify? What does that mean? A Well, that had reference, I believe, to the question on selection of tenants. Tenants who make application at our downtown rental office are permitted three choices which may be offered to them before we move them to a lower place on the waiting list. If they have valid reasons for rejecting an apartment that is offered to them [H-170] they do not lose their place in line during those three offers.

Q Well, what are the three choices that are given them? A Well, it depends on the location of the vacancy.

Q In other words, you will put them into whatever projects you have a vacancy in? A Yes, sir.

Q Without regard to race? A Yes, sir.

Q And they are free to choose? A Yes, sir.

Q And once you have given them this choice, if they do not accept one of the three locations, they move back on the list of persons that would be permitted to make a choice? A That's right.

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Q All right.

Now, what did you mean by shortage of sites? You said there was a shortage of sites that was critical in the City of Richmond.

And then you got into a problem or a discussion of whether the Council would approve these units.

[H-171] Do you mean that there is a shortage of sites in the sense that there is no available space that could be utilized for this purpose provided the owners of it were willing to use it for the purpose, or do you mean that there is just not the space? A There is a very acute shortage of available space within the City which is buildable and available for any kind of development. This does not only apply to housing, residential use, but for other types of use as well. This was the thrust of our testimony in the annexation proceedings. We have been faced with intense difficulty in trying to locate sites within the City of Richmond even before annexation occurred.

Q Well, have you had any difficulty in purchasing sites that weren't located within the City of Richmond? A Oh, yes, we always have difficulty in attempting to find sites even within the present City.

In other words, when you get out of the core area that is primarily occupied by the black people of the community, or is in transition, you have difficulty in acquiring site locations for these projects inside the City as well as outside. We have difficulty in finding sites even in completely black areas. Everyone thinks the [H-172] low rent housing program is a good one until it begins to touch their neighborhood. Then we find that class discrimination takes over and is perhaps even more prevalent and vicious than racial discrimination.

Q And that is true in the black area as well as in the white area? A Yes, sir.

Q This is common, a common resistance, both inside the City and inside each of the counties? A As far as I know it is the case around the country.

Q It is common experience all over the United States? A Yes, sir.

* * *

[H-173] By Mr. Gray:

Q Mr. Fay, you appeared as a witness on behalf of the City of Richmond in the recent annexation case against Chesterfield County, did you not, sir? A Yes, sir.

Q And the import of your testimony at that time was that you needed some land, some housing units— A Yes, sir.

Q —for the City of Richmond.

How many units did you need then? Do you recall? A At that time I think our projection was for 7,000 dwelling units of low and middle income housing.

Q And you had 1,500 under construction at that time? A Yes, sir.

Q So that your net at that time was about 5,500 units that you needed? A Yes, sir.

Q How much acreage does it take for 5,500 units, Mr. Fay? A Let me do a little calculating, if you don't mind.

The Court: Do you need a pad?

[H-174] The Witness: No. I have it.

From 350 to 400 acres.

By Mr. Gray:

Q 350 to 400 acres. Do you want it in big acreage or small parcels? A No, sir. We would be better satisfied with smaller sites. Our present scheme of development contemplates groupings of no more than 60 apartments.

Q So you want it in smaller tracts. Do you want to tell me, sir, or are you testifying, sir, that in the annexation that territory from Chesterfield that you did not acquire enough open space that you could find that much acreage? A Yes, sir. We thought we had found it until we proposed the annexation of those sites to the Council of the City of Richmond and the citizens of the area erupted violently and in effect prevented our acquiring it.

Q Well, City Council is the one that brought the annexation suit, didn't it? A Yes, sir.

Q And one of the reasons they gave for bringing the annexation suit was they needed some land for you for your project, wasn't it? A Yes, sir.

[H-175] Q And they got some land, didn't they? A Yes, sir.

Q Now they have turned you down on one of your requests? A Yes, sir.

Q You still can't find any land in all of that 21 square miles? You can't find that much? A We are not trying now.

Q You are not trying.

Well, I understood you to say that you didn't have the land within the City of Richmond A And we can't get land in the annexed area so we—

Q In the City, isn't it? A That's right.

Q You can't get land there? A Apparently not.

Q You have the power of eminent domain, do you not? A Yes, sir, but we always have to have the approval of Council for the City of Richmond.

Q So it is Council for the City of Richmond that is your problem? A The Council is reacting to pressure from the [H-176] residents of the area.

Q Well, the Board of Supervisors of Chesterfield County hasn't objected, have they? A No. No, they would have no position in the matter, I would think.

Q All right. Fine.

Were you aware of the compromise agreement between Chesterfield and Richmond? A I read about it in the paper, yes, sir.

Q Didn't consult with you about it beforehand? A No.

Q All right.

The Court: Let me get it straight, Mr. Fay. You are not saying there is a lack of geography, a lack of land. You say it is too difficult to get regardless of the reason?

The Witness: Your Honor, there is a lack of land. We attempted recently to find locations for approximately 100 units of elderly, elderly housing. When I say recently I mean within the last 30 days. We asked the City Planning Commission to give us all possible locations. They reviewed every site of more than three acres in the City of Richmond which amounted to some 45 locations including abandoned cemeteries and railroad yards and fairgrounds and [H-177]

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things of this sort. They concluded that of those 45 locations only 16 could be considered.

Because of problems of flooding and other topographic conditions, that was reduced to six. None of which would meet the HUD requirements with respect to racial occupancy.

The Court: All right, sir.

By Mr. Gray:

Q How many sites did the City of Richmond find for the proposed university that they wanted to bring into the City? A Are you asking me, sir?

Q Yes, sir. A I don't really know.

Q Well, they found quite a few, didn't they, that they proposed as a location for the new university? A I remember only one and that was Chimborazo Park. I don't know how seriously that was considered.

Q How many acres in that site? A Oh, I would say perhaps six or eight.

Q Six or eight acres? A I would guess so.

Q All right, sir.

Now, did I understand you to say that you do [H-178] have authority or do not have authority to exercise your power outside the corporate limits of the City of Richmond? A We do not have the power to exercise our programs outside the City.

Q All right, sir.

Now, did you say that the racial desegregation of your projects was required in the beginning of your testimony? A Yes, sir.

Q By whom? A By the United States Housing Authority and its successor agencies, the predecessors to HUD.

Q That wasn't anything charged to the Board of Supervisors of Chesterfield County? A No, sir.

Q All right.

The Court: I would suspect that authority is limited geographically.

By Mr. Gray:

Q You found in some of your redevelopments a good deal of the work that you do is to take what we call a slum area or a blighted area, I believe you refer to them as, and rebuild them, tear down what is there and rebuild them? A That's right.

[H-179] Q What has been your experience with respect to the desires of the people in the area to remain in the area after it is rebuilt? A By and large there has been a surprising feeling that the people wish to remain in those areas.

Mr. Gray: Thank you, sir. No further questions.

The Court: Did Mr. Gray's questions prompt any change of heart?

Mr. Byrne, Mr. McIlwaine?

Mr. McIlwaine: No, Your Honor.

The Court: All right.

Any redirect?

Mr. Lucas: Yes, sir.

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Redirect Examination

By Mr. Lucas:

Q To clear one matter up, you do have authority to go outside the city limits with the Richmond Redevelopment Housing Authority if you have the approval and consent of the surrounding jurisdictions? A Yes, sir. My answer to Mr. Gray was under persent circumstances.

Q I understand, sir.

You do have the power of eminent domain within [H-180] the City? A Within the area of our operation.

Q You mentioned the opposition in the black community. I take it despite opposition the projects were approved within the black community, is that correct? A No, sir. The opposition was so intense that they never reached the stage of going to the City Council.

Q You didn't present that one to the City Council? A We didn't present them to the City Council.

Q Is there any feeling in the black community that the most public housing is concentrated there and other parts of the community don't meet their fair share of the burden? A Yes, sir. That is the feeling particularly in the East End of the City.

Q Thank you, sir.

The Court: Mr. Gravatt?

Mr. Gravatt: I will let him go ahead.

The Court: Mr. McIlwaine?

Mr. McIlwaine: No, Your Honor.

The Court: Mr. Byrne, do you have a question that you would like to ask that you neglected to ask before?

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Recross Examination

[H-181] By Mr. Byrne:

Q Mr. Fay, it is conceded that you have the power to or that you can operate outside of the City limits, but have you sought to operate in Henrico County? A No, sir. I explained that we have not.

* * *

* * *

[I-4] PROCEEDINGS

(August 26, 1971) (Thursday at 9:30)

The Clerk: Civil Action 3353-R, Carolyn Bradley, et al., versus the City School Board of the City of Richmond, Virginia, et al.

Case continued from yesterday.

* * *

KARL E. TAEUBER

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

[I-5] * * *

Direct Examination

By Mr. Lucas:

[I-6] * * *

Q Dr. Taeuber, have you had occasion to study the statistical data with regard to the City of Richmond in the past? A Yes.

Q In what connection? A In connection with a general study of patterns [I-7] of residential segregation and neighborhood change in all large cities in the United States.

Q And what is the name of that study? A The main results are reported in a book whose title is "Negroes in Cities."

Q And are you the author of that book? A Together with my wife.

Q Would you describe for the Court, Dr. Taeuber, the meaning and the function of a segregation index or an index of dissimilarities, as it may also be called? A Yes. An index of dissimilarity is a measure that is used in a couple of the social sciences to compare the distributions of two different types of people through space.

Now, in this particular we may consider the distribution of whites and blacks among the neighborhoods in a city. If one observes the city blocks in Richmond or any other city in the United States using the data provided by the U. S. Bureau of the Census, one can observe that many blocks are predominantly occupied by people of one or the other race.

Now, if every block were occupied by only blacks or only whites we would have a situation that would be described as completely dissimilar distribution of blacks [I-8] and whites, or if you choose, completely segregated. We would like to have a statistical measure which gives a score to which this, and we use an arbitrary score of zero to 100, on a measure of 100 that will show complete segregation.

If, on the other hand, the two racial groups are randomly distributed among the city block we would like to have a score of about zero. This would represent the case in which the percentage of blacks in each city block were the same as in every other city block.

Q Now, you mentioned the use of block data, U. S. Census is broken out into that particular level? A Yes.

Q With regard to cities? A Yes.

Q Is there another form of measurement also used in the census? A Yes. For statistical purposes the Bureau of the Census reports data for areas which are called census tracts. These are typically four to five thousand in popula-

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tion. They are larger than the typical city block. This is necessary for reporting various kinds of census data unless the block is too small.

The Census Bureau has also used census tracts [I-9] to publish data for urban areas that do not have the typical city block pattern so that many suburban areas, for instance, are tracted by the Census Bureau but no data are published on the detailed city block basis.

Q Does the use of the tract data give a finer measure or does the block data give the finer measure? A The block data gives a finer measure because they are smaller units. In particular, one could have a census tract consisting of several blocks. The individual blocks might be entirely of one race or entirely of another race, but if they are within a single census tract the census tract would appear to have some intermediate percentage of each race.

Q Can you describe the application of this technique as used in your book "Negroes in the City." A Yes. The essential purpose of the technique is to give a precise statistical measure that anyone can calculate who follows the proper formula so that we can compare one city with another and one city with itself at a different point in time. For instance, at a different census date.

Without such a measure one is forced to rely, as has been done in some scholarly works, on merely presenting a series of maps such as the ones that have been presented [I-10] here, showing the percentage Negro by some kind of shading for different areas.

If one looks at a series of these maps it is a subjective matter to say whether the degree of segregation has increased or decreased or is different than as presented in one map than as presented in another map.

So the idea of using a numerical measure is to take away the subjectivity of these comparisons. In the book we reported a large number of such measures for all large cities.

Q How many cities in general were involved in some aspects of the study? A We present these measures for more than 200 cities.

Q Was Richmond, Virginia, one of the cities included in the study? A Yes, it is.

Q What were the general findings of your study, sir, with reference to segregation indexes, residential segregation indexes of the cities? A We found by examining these indexes, using data from 1960 census, the corresponding data from the 1970 census, are only now beginning to be published. We found a residential segregation of the races was very pronounced, was [I-11] pervasive throughout the United States. That this pattern occurred in cities in all regions. It occurred in cities of all types, whether manufacturing cities or retail trade centers, whatever the character of the city.

We studied the changes going back as far as 1940, because that is the year that the Bureau of the Census began the city block data program. And we found that this pattern was typical in 1940 as well as in 1950 and 1960.

Q Did your study also include an analysis of the factors which are said to influence housing such as ethnic groups living together, the effect of economic factors on where people live and things of this sort? A Yes, it did.

Q In your study were you able to determine the effect of these various particular factual circumstances and then compare them with the effect of race? A Yes. In the case of ethnic characteristics we calculated indexes of dis-

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similarity comparing the residential patterns of each of the various immigrant groups of European origin, such as persons of Polish background or British background or German background.

Q Is this information contained in the census breakdowns? A Yes. All of this information is in the census [I-12] material.

We also examined corresponding information on the population of Spanish surname. The general finding is that each of these groups—

Q Excuse me, sir. Let me ask you first. What was it that you were seeking to test when you looked at that data? What factor were you seeking to examine? A The principal import of the analysis of ethnic groups in the study of the racial segregation is precisely in the comparison of the situation of blacks to that of various other identifiable groups in the country. In particular because the patterns of discrimination, the historical patterns pertaining to blacks are sometimes likened to those that were faced by these various immigrant groups.

The ethnic groups have largely gotten beyond this stage so that there is not a great deal of social discrimination against most of these groups now, but there is nevertheless a certain ethnic identity. There are ethnic institutions and there are some awarenesses of membership in that group. And the question is what degree of segregation occurs for these groups which do not face such great discrimination in our society.

Q All right, sir.

[I-13] What were your findings with respect to the ethnic groups? Let's do that first and then compare it to race. A In general the ethnic groups are somewhat resi-

dentially segregated one from another, but the measures on this zero to 100 scale tends to be in the range from 15 to perhaps 30, depending on the particular group.

Q Is this a general finding for all of the cities studied for which that information was available? A Yes, it is.

Q Now, before we go to race, what about economic factors? Did you look at those? A Yes. I did look at economic factors.

Again in two ways, of which the most direct is to say to what extent are groups of different economic status segregated one from another in our city.

One can use different occupation groups or different income groups.

Again the degree of segregation of one occupation group to another or one income group from another tends to range up to an index of about 35 or 40 or other groups that are further apart in the economic scale.

Q Did you examine any such data for the City of Richmond for 1960 census? [I-14] A Yes.

Now, in the case of the City of Richmond I made a more direct comparison of the segregation that would be expected among the racial groups simply from the fact that the racial groups differ in their economic circumstances.

Q What was the result of your comparison? A The result of this comparison is to demonstrate that very little —my most formal estimate would be 15 percent, but this is a complicated statistic, very little of the residential segregation between blacks and whites can be attributed simply to the fact that black and whites pay different amounts of rent or mortgage payments for housing, which they occupy.

Q All right, sir.

Did you also study the factor or test the theory that the importance of choice in the concentration or lack of concentration in terms of both ethnic groups and racial groups? A In a very general way I have made this kind of assertion. But it is largely in the general analysis a residual component. In other words, I am able to measure the contribution of economic circumstances with respect to choice. There is no objective set of measures at the level [I-15] of the individual city that would permit one to say where each individual would like to live in the way we can say how much his income is or what his occupation group is. There have been national sample surveys in which people have been asked as to the kinds of neighborhoods in which they would like to live. And tests invariably show that the large majority of blacks say that they would prefer to live in integrated neighborhoods.

Q Doctor, at our request have you examined figures, such figures as are available from the 1970 census, with application to the City of Richmond and the Counties of Henrico and Chesterfield? A Yes, I have.

Q Have you from this information prepared a segregation index for the City of Richmond? A Yes, I have.

Q Would you tell us first of all what you did and then give us some comparison with the previous figures for the City of Richmond beginning back in 1940 and taking it through to the present? A Before 1970 the only census data available are some early versions of the census tract data, the city block data had not yet been released.

I used census tracts as the area units for [I-16] this to examine the residential distribution of blacks and white. I did this for Richmond. I also did it for the combined

school community of Richmond plus Chesterfield and Henrico Counties.

The segregation index, or to be precise, the index of dissimilarity for Richmond for 1970 was 82.1. As I say this is simply on a scale of zero to 100 with 100 representing a complete racial dissimilarity in housing patterns.

There is an interpretation of that 82 percent which might help make it a little more real.

If an effort were made to—if an effort were to be made to obtain a similar distribution of blacks and whites, a random distribution so that every tract had approximately 42 percent black and 58 percent white, then one could obtain this kind of distribution by moving 82 percent, the index figure, of the blacks out of those tracts in which blacks are overrepresented into tracts in which they are currently underrepresented in this standard.

Alternatively one could move 82 percent of the whites out of tracts in which they are more than 58 percent of the population and redistribute them among the tracts in which they are less than 58 percent of the population. That is the meaning of this 1970 Richmond index of 82.

[I-17] Q Dr. Taeuber, if the black and white populations were randomly distributed in accordance with their proportions in the total population of the City of Richmond, would the index of residential segregation or the index of dissimilarity be zero? A The index would be approximately zero, but if you trace it the way you did in terms of a random distribution, then one would find some census tracts which might perhaps be 45 percent or 47 percent rather than precisely 42 percent of a given race.

Q 42 would be perfect and random, would it be? A Yes.

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Q Up to approximately five or ten? A You might get five percent on either side.

Q I see. A And this would have a side effect on an index. In other words, it might come out to be an index of five rather than an index of zero.

Q And if the perfect segregation then, residential segregation would be 100? A That is correct.

Q And your figure for 1970 is 82.1. What about 1960? A Yes. Using the corresponding data for census [I-18] tracts for 1960 the index of dissimilarity is 79.3, about three points lower in 1960.

Q Doctor, referring you back again to the City of Richmond, did you use the city blocks? Would you look at those figures for the years—I take it they are not available for 1970, is that correct? A That is correct.

Q For 1960 using the, what you have described as a finer measure, that is, can you focus on each block in the city? What was the figure for 1960? A Yes. Using the city blocks as the basis the index of dissimilarity for 1960 is 94.8. I might point out that it is necessarily larger than the figure of 79.3 I just gave for a measure based on census tracts because the blocks are a finer unit and they would reveal more difference in the residential distribution of blacks and whites than just the larger unit.

Q 1950 was 92.2. Is that correct? A That is correct.

Mr. Lucas: Your Honor, I am referring to Plaintiffs' Exhibit 131.

The Court: Yes. I am looking at it.

Mr. Lucas: Prepared by the doctor last night.

By Mr. Lucas:

[I-19] Q Doctor, did you look at the census tract data, since I take it that is all that was available, for 1970 for the combined school community of Richmond, Chesterfield, and Henrico County? A Yes, I did.

Q And in general did you apply the same techniques? A Yes. The techniques were precisely the same.

Q And what figure did you have for a combined school community with respect to residential segregation? A The index for 1970 for the combined community is 79.7.

Q Did you examine the figures for the same area for 1960? A Yes, I did obtain a value of 76.1.

Q Doctor, looking at Plaintiffs' Exhibit 131, is there an increase in the measure of residential segregation or the segregation index using both or either the census tract or the combined school community, I am sorry, the census tract for the City of Richmond alone or the combined school community? A Yes, there is.

Q Is there an increase in both? A There is an increase in both.

[I-20] Q Doctor, do you have an opinion as to the causal factors that underlie the pattern of racial segregation in terms of residence which you have described? A Yes, I do.

Q Would you tell us your opinion, please, sir?

* * *

The Witness: Yes. In general in the scholarly literature three types of causes of this residential pattern for blacks and whites are recognized. These three include the economic differences between the two groups, the choice of each, of

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members of each group as to where they wish to live, and the processes of discrimination that affect the way in which these other factors can operate.

With respect to economic status I have already indicated the general result from statistical examination of census data that these factors are nowhere nearly as important as they might at first seem.

By Mr. Lucas:

Q In other nonblack groups in studying this factor you testified that the scale might be as high as what, [I-21] 35? A If one simply compares one economic group versus another one can get up to indexes of that character.

Q Whereas for the City of Richmond when race is figured in your index it comes out to 82.1 and for the school community 79.7? A That is correct.

Q All right. A Now, the situation is a bit more complex because the economic interpretation assumes not only that economic groups must be segregated one from another but that the races must differ greatly in their relative proportions of high and low income groups or high and low groups identified by occupation or some other way. And indeed it is just not the case that all blacks are poor and all whites are rich. There is considerable overlap in the distribution by economic traits and, as I say, the economic groups themselves are not anywhere near as highly segregated one from another as the race groups are.

So that in general using statistical means 15 percent or less of the racial segregation can be attributed to the combination of operations of these economic differences.

I was commenting generally on the role of [I-22] economic differences, choice and discrimination. I indicated on

the choice argument that in the first place opinion polls suggest that blacks are unhappy living in the kinds of predominantly black neighborhoods in which they live. That they prefer more integration in their neighborhoods.

I have also examined census data to show that the better off economically the Negro population in cities are the more likely they are to live in areas that are somewhat mixed in racial character. So that those Negroes who can afford economically to purchase housing of a wide variety of types show in a statistical way that they would like—they show in their behavior that they prefer to be not quite so segregated and to live in better housing in the kinds of communities that whites with higher incomes also prefer. This leaves the discrimination argument. And there is abundant evidence that a variety of patterns of discrimination, the Federal Housing Administration guidelines, the operation of real estate boards, a variety of zoning regulations, and many other devices have been used in the past and are still being used to define neighborhoods as being predominantly for whites or predominantly for blacks and to affect the ease with which an individual of one race or the other can obtain housing in a particular area.

[I-23] Q To the extent, Doctor, that even the poverty argument is affected by discrimination in other fields such as employment and education, this would have a role in the statistical effect of the poverty or income differentials, would it not? A Certainly this division into economic choice and discrimination is necessarily a bit artificial because the discrimination that I refer to there is simply discrimination in the housing market.

Now, if one examines the causes of economic differences between the races then again the weight of the scholarly evidence is that discrimination in employment, in education, has a very great impact.

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Further, the choice that is manifested is also affected by the situation that an individual confronts. And there is a history in many cities of bombings, burning of crosses, or other pressure placed against blacks who have at least on a temporary basis obtained housing in neighborhoods that were defined by somebody as white.

So that to the degree that many blacks choose to live in white—excuse me—to the extent that blacks choose to live in predominantly black neighborhoods, this again is affected by the feeling of actual physical danger of trying to exercise other choice.

[I-24] Q You have not made any particular study of the factual circumstance of racial segregation in housing in the City of Richmond or its environs, have you, Doctor, other than what you have from the statistics? A No, not of these specific causes.

Q Doctor, were you furnished with certain enrollment data and projections under Plan III for the City of Richmond Public Schools? A Yes, I was.

Q Were you also furnished with certain enrollment data for the Counties of Henrico and Chesterfield? A Yes, I was.

Q Using that data, sir, did you at my request prepare an index of dissimilarity of a segregation index under the proposed or the projections of Plan III for the City of Richmond and in turn the projections—I am sorry, the enrollment figures for 1970 Chesterfield and Henrico Counties, and make a comparison between them? A Yes, I did.

Mr. Lucas: Your Honor, I think these matters are contained in Plaintiffs' Exhibit 132.

The Court: I have it in front of me. Thank you.

[I-25] By Mr. Lucas:

Q Do you have a copy, Doctor?

Referring to Plaintiffs' Exhibit 132, would you tell me what you did with the information furnished you? A Yes. I mentioned that the index of dissimilarity is a valuable statistical measure in the social sciences. The use I reported before was for comparing the distribution of blacks and whites among areas such as city blocks or census tracts. But the same technique can be applied not using areas but using any other group of categories that divides the population, such as elementary schools where the population referred to are the black and white elementary school pupils.

Thus the concept remains the same. If the percentage black in the Richmond elementary schools as projected for 1971 is about 61 percent then 61 percent is the standard to be applied for calculating the index. Any school that has more than 61 percent black has some degree of overrepresentation of black pupils. Any school that is less than 61 percent black would have some overrepresentation of white pupils.

Now, using the Plan III projections that were provided me I calculated the degree of divergence from this standard of 61 percent in each school.

[I-26] And the index of dissimilarity that I calculated is 16.2. This is still not at a zero or not quite at a random level of perhaps five, but it does suggest that to obtain complete evenness, complete equality in the distribution of blacks and whites among these elementary schools, about 16 percent of the blacks or of the whites would still have to be shifted. This would produce an index value of zero.

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Q Directing your attention to Roman number II of Plaintiffs' Exhibit 132, can you tell us what you did with the data with respect to the combined school community of Richmond, Henrico, and Chesterfield, and indicate your sources, please, sir? A Yes.

Using the projections under the plan provided for Richmond and the reported enrollment figures for the fall of 1970 for Henrico and Chesterfield Counties, and material provided by the respective school systems, I calculated an index for the combined area.

Now, to look at the combined area requires calculating the percentage black among the combined elementary school population for Richmond and the two counties. This figure, in this instance, is 31.5, just [I-27] under one-third black.

So in this case each school is compared with this figure of 13.5 to see whether it has an overrepresentation or underrepresentation of blacks and the degree of overrepresentation or underrepresentation is then summarized by the index of dissimilarity.

The figure I obtained is 63.8. This suggests that in the combined school community with Plan III in Richmond and the approximate situation existing in the fall of 1970 for Chesterfield and Henrico, these situations were put together. Then there would be about 64 percent of the blacks that would be in need of being redistributed from schools in which they were overrepresented to schools in which they were underrepresented or 64 percent of the whites, in order to achieve an index of zero.

Q So with zero being the perfect distribution and five being roughly a random distribution, the effects for the index of segregation for the Richmond school community

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under these assumption was 63.8, is that correct? A That is correct.

Q Now, did I give you last night some information with respect to Central Gardens and the projections for changes in its enrollment pattern for '71-'72 school year? [I-28] A Yes, you did.

Q And did you recalculate the index for the combined school community assuming Plan III, the projections for Chesterfield, and the projections for Henrico County as modified by that change in Central Gardens? A Yes, I did.

This required shifting on the basis of the fall 1970 figures 642 black pupils and 29 white pupils from a school that was predominantly black. And I assumed that the distribution would result in neither Central Gardens nor any of the four schools to which these pupils would be reassigned being more than 31 percent black as a result of the shift.

Q What index of segregation resulted from adding that figure or making that change? A Well, making this change and keeping everything else the same, the segregation measure is 60.3.

Q Doctor, your profession is sociology, correct? A Correct.

Q Chairman of the Department of Sociology in Wisconsin? A Yes.

Q Is the utilization of this index of dissimilarity of segregation index as used by you in your [I-29] book and other works in residential segregation, is it properly applied to public schools' enrollments? A Yes, it is.

Q Does it have the same reliability in terms of projecting what the situation is? A Yes, it does.

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District Court Proceedings of August 26, 1971

[I-31] * * *

Cross Examination

By Mr. Gravatt:

Q Dr. Taeuber, did I understand you to testify that the racial distribution in the City of Richmond generally conforms to the pattern of racial distribution in all of the large cities of the United States without regard to what type of city it may be? A Yes.

Q In other words, in each of the large cities you will find a Negro concentration in the core of the central city, is that correct? A To be precise in terms of those statistical evidence it is that there is a high degree of segregation within the central city taking the city as the unit.

Q Well, the term segregation has so many [I-32] definitions that I am asking you in terms of concentration of Negro population, in other words, the place where they are found within the city, according to the census tracts are in a central part of the core of the city. Is this generally correct? A Well, it is quite commonly the case, but it is not always true that the Negro areas are concentrated right in the center of the city.

Q All right, sir.

They are in some part of the old city, usually? A Usually.

Q Now, what has been the trend of population movement, generally, throughout the United States, from approximately 1948 up until after the 1960 census with respect to movement of population into or out of the central city?

A There has been a continued movement of people in a very complex pattern whose net result is a very rapid growth of the suburban areas and a relative stability of the city areas.

Q So that what has happened in the City of Richmond with relation to Henrico and Chesterfield County is characteristic of what has happened generally throughout [I-33] the metropolitan areas of the United States, is that true? A In a very general way, yes.

Q Well, isn't it a fact that almost uniformly the white population generally, those who could afford it, have moved out of the central city and into the countryside and developed the countryside into suburban areas during the last 30 years from 1940 up until the present? A This is a general proposition, but it seems more true generally than precisely of Richmond in terms of the data I have looked at.

Q What do you mean by that? A In the sense that the white population of Richmond has not declined as it has in large numbers of other cities so that the characterization of large numbers of whites moving out of the city to the suburbs may not apply in quite the same way.

Q In other words, it is not demonstrated by the census tracts that the building up of populations in Chesterfield and Henrico has resulted from a movement out of the city into those counties but may very readily have resulted simply from persons moving into those counties from other places other than the City of Richmond? A Well, undoubtedly both processes are very strong. Both are at work.

[I-34] Q But the City of Richmond white population has maintained stability? A It has increased some, yes, sir.

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Q Now, how did you utilize the census data in order to make your determination with respect to whether economic conditions have influenced the racial pattern within cities? A Now, the general procedure is to use the census data to characterize the—

Q Let me stop you a minute.

Do you mean the general procedure is, or do you mean that the procedure that you used is? A The procedure that I used is to take from the census data the information showing the distribution of people in each census tract by the actual rent paid or the value of the homes in which they live. So that for each census tract we know how many homes there are of more than $20,000 value, how many less than $5,000 value, how many people pay more than $100 rent and how many pay less than $50 rent. We have this full information for each census tract.

Now, the census data also show for the entire city what percentage of homes at each rent or value level is occupied by blacks.

[I-35] So the procedure then is to say that if in the city as a whole say 50 percent of the homes renting for less than some amount are occupied by blacks then within each census tract, hypothetically, how many blacks would we find if 50 percent of the low-rent homes in that tract were occupied by blacks. And similarly may be at the highest value level we would say in the city two percent of those homes are occupied by black and within each individual tract on a hypothetical basis how many blacks should there be if income—if rent were the only factor that determined where whites and blacks lived. When I go through this I get this hypothetical location of blacks and whites determined simply by how much rent and the value of the homes the blacks and the whites actually occupy in the city.

And I can say how much segregation is demonstrated in this hypothetical distribution and that that is the basis for this argument that not very much segregation results when this hypothetical process is carried through.

Q What does the process show you that leads you to that conclusion? A It shows me that if I take a city which has—if I take Richmond, take the census data for 1960 and say each tract is housing that rents for a certain amount and so much housing at each rental level, then I say in the [1-36] City of Richmond in 1960 there were just over 200,000 people. I divide them up into households and say approximately 42 percent are black and of those blacks so many throughout the city are paying rents of less than whatever it is, say $50.

Now, let me take those blacks paying less than $50 a month rent and put them randomly into housing that rents for less than $50 a month. Then let me take whites that pay less than $50 a month and put them randomly into the housing that rents for less than $50 a month. And similarly through each income level. Let me take the people, the blacks that live in housing that costs more than $20,000 and put them randomly into the high-priced housing within the City of Richmond and the same thing for the whites that already pay that much. Then say how much segregation do I get if I just put them through the city strictly according to the rents they pay. And I get very little segregation of the races when I carry through that process.

This says that if people lived strictly according to the rents they already pay with no regard to their race there would not be very much racial segregation.

Q So in that way you have taken a hypothetical situa-

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tion and applied it to the rental and value of housing and you have reached the conclusion that the rental, the low [I-37] rental and high value of houses has not been a factor in locating people in the City of Richmond? A I am saying given that it is a factor in locating people it is not a major factor in locating people of different races.

Q Now, did I understand you in your testimony to state that you did not have any way demographically to make a conclusion as to what effect the choice of a person as to where he might live would have? A I made that statement and modified it slightly by saying that I had some evidence of the actual behavior or the actual residential patterns of those blacks who do have higher income.

Q Then you resorted in order to eliminate choice to a Harris Poll that you said was taken and which showed that blacks would prefer, some 60 percent, to live in integrated housing? A Yes. I used that information.

Q Now, so that on the basis of your demographic studies of census information you are unable to determine whether or not people live in these racially concentrated areas by choice or not from the census data? A I am largely unable to do so, yes, sir.

Q All right, sir.

[I-38] Now, does the census data give you any way of determining what—I understood you to say that people were not happy in the segregated neighborhoods. A Yes. That was the poll data.

Q Well, does your census data give you any way of determining whether those people would be more happy if they were living in white areas? A No, it does not.

Q So that this is a meaningless thing that they are unhappy where they are living until you know whether or not they would be happy out in Chesterfield or out in Henrico, for instance? A Well, is that a question that I am supposed to answer?

Q Yes, it is a question. I am asking you if you agree is that a sound conclusion that simply because a person says he is unhappy living in a place doesn't mean that he would be happy living in another place? A That is true.

Q All right.

Now, you mentioned certain things or processes, I believe you referred to the lending institutions and things of this kind that have created in your judgment, or in what you have said, to the concentration of black people in a [I-39] certain area? A Yes.

Q This is not information that comes from the census data, is it? A No, not for the most part.

Q Have you made any investigation to find out anything about lending policies of institutions in the City of Richmond? A No.

Q So that you cannot say as to whether or not any of these factors have had any effect or contributed in any way to distribute, racial distribution that you find within the Richmond metropolitan area? A That is correct.

Mr. Gravatt: That is all.

The Court: Mr. McIlwaine, do you have any examination, sir?

Cross Examination

By Mr. McIlwaine:

Q Dr. Taeuber, I believe in your book "Negroes in Cities" you concentrated on certain cities, although you

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covered some 200, you concentrated in parts of your efforts to a number of cities, some ten? A Yes. The second half of the book concentrates [I-40] largely on ten cities.

Q And which ten are those, Doctor? A Can I answer that they do not include Richmond, or do you want me to run through the list?

Q If you have them I would like to get it. A I can look through the list.

Detroit, Cleveland, Philadelphia, St. Louis, Washington, Baltimore, New Orleans, Atlanta, Birmingham, Memphis. Those are the ten.

Q And you did not include, I believe, New York? A I did not.

Q And why was that omitted, Doctor? A That was omitted because the census tract data for 1940, '50, '60 were not strictly comparable. There were too many changes.

Q And Chicago? A Chicago was covered in a separate study in which most of the same kind of analyses were undertaken.

Q And Los Angeles? A Los Angeles did not maintain comparability in the definitions of its census tracts.

Q Would you expect your results that you found for the ten that you studied to be true of New York, Chicago, and Los Angeles, to be similar? [I-41] A Well, to start the study reports the kind of differences that were noted, but in general I would expect—well, I know that Chicago was very similar to the other northern cities because there is a study of Chicago. New York has never been studied in this kind of detail. Los Angeles might be somewhat different because it is quite a different kind of city.

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Q Well, did you calculate for the 200 cities that you did use the same index? A Yes.

Q For each one of them? A Yes.

Q And would this be a true statement of your results that you found "Almost all of the cities studied were more than 70 percent and many were in the 80's or 90's, that this demonstrated that racial residential segregation is not unique to one city or one type of city but is a common pattern among American cities. It prevails in the north and in the south, among industrial cities, among resort cities, university towns, large cities, smaller cities, in effect it was a universal pattern"? A Yes.

Mr. McIlwaine: Thank you, Doctor.

The Court: Mr. Lacy, do you have any [I-42] examination?

Mr. Lacy: No, sir.

The Court: Mr. Byrne?

Mr. Byrne: No questions, Judge.

The Court: Mr. Gray?

Cross Examination

By Mr. Gray:

Q Dr. Taeuber, somebody handed me a question.

Would you define a standard metropolitan statistical area? A Yes. For statistical purposes the Government has designated a standard metropolitan statistical area as surrounding and including each large city, in general each city of 50,000 or more population, either the central city of the metropolitan area or is included in a metropolitan area. Now, the area includes the central city, the defining

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city, plus whatever counties it is in, if there is a system of counties of that sort, plus whatever surrounding counties are economically integrated with the central city using measures of computing telephone communications and the like.

Q Now, all right.
Could I approach the witness, Your Honor?

The Court: Yes.

[I-43] Mr. Gray: I ask you if you recognize this document?

The Court: Let counsel see it, Mr. Gray.

Mr. Gray: Excuse me. I am sorry.

The Witness: Yes. This is a Bureau of the Census report on population estimates and projections.

By Mr. Gray:
Q Would this give you the net in-migration into the City of Richmond during the last ten years? A This gives the Census Bureau's estimate of that figure.

Q Well, Doctor, would you tell the Court, and I will put a star so that you can find it more easily by Richmond, would you tell the Court what the net in-migration of blacks into the City of Richmond for the last ten years has been? A The report here in the net in-migration of Negro and other races into Richmond is 782 persons.

Q Now, that is 782 for the whole ten-year period? A That is correct.

Q So if I told the Court it was 105 per year I was a little bit off, it was just 78 per year? A Average over the decade, yes, sir.

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[I-44] Q All right.

The Court: No offense.

Mr. Gray: Thank you, Your Honor.

By Mr. Gray:

Q What was the net in-migration of whites? A You are forcing me to do a quick subtraction because the figure is given as a total which is 15,870 subtracting the whites would be about—

The Court: Lead the witness. You have probably done it.

Mr. Gray: He has the document, Your Honor.

The Witness: 14,300.

By Mr. Gray:

Q Beg your pardon? A 14,300.

Q About 14,300 in-migration of whites into the City of Richmond for the last ten years.

Now, Doctor, are you aware that there has been a recent annexation to the City of Richmond? A Yes.

Q Well, do you know whether the figure, the 14,000 net in-migration, would include the influx due to annexation? A It is not intended to, providing the Census [I-45] Bureau has the correct information on it.

Q All right.

So this is the net in-migration of whites without the annexation? A Correct.

Q And net in-migration of blacks without annexation? A Excuse me. I mention that is what it should be, but I have no knowledge of whether the Census Bureau made all of those adjustments in these particular data.

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The Court: So I understand exactly what it is, I thought that was just a projection, prediction as to what would happen in the past ten years. Am I correct or not?

Mr. Gray: Doctor, these are actually preliminary figures without their final adjustments. These are the preliminary figures from the census which has been taken, are they not?

The Witness: Yes.

The Court: So it represents what these estimate the final figures will be to show for the past ten years, is that correct?

Mr. Gray: Yes, Your Honor.

The Court: Well, it might include the [I-46] annexation people.

Mr. Gray: I asked the question because from the publication I could not tell whether it includes the annexed figures or not. For my purposes if it includes the annexed figures then the net in-migration of blacks has been even less than the 780.

I honestly represent to the Court that I suspect that it includes the annexed figures, but I cannot tell.

The Court: All right, sir. Thank you, Mr. Gray.

By Mr. Gray:

Q Doctor, you have indicated now—

Mr. Lucas: Excuse me. I might be of some assistance, I believe there is a footnote with respect to statistics that are affected by annexations to independent cities from 1960 to 1970.

Mr. Gray: Well, I thought that was, Your Honor, I thought this was one that had the little numeral by it and Richmond doesn't have a numeral by it.

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The Court: That is all right.

The Witness: I think I concur that given the procedure, since these are basically county estimates and throughout the country very few counties move boundaries, [I-47] that footnote suggests they did not make corrections for those areas that are independent and not part of counties and correspond to the census data that that shows a total increase in the white population for Richmond including the annexed increment of less than—well, just about 16,000.

By Mr. Gray:

Q Yes, sir. A And the natural increase would clearly contribute something. So that that figure, that in-migration figure, must include the annexation.

Q I think it probably does.

Doctor, you have indicated that with respect to other ethnic groups in America today you don't find much resulting, as much resulting discrimination, but there is still discrimination against Negroes. Over what period of time, how far back can you go and say that the discrimination against the other ethnic groups has diminished? A Well, some of the data to which I made reference are before the turn of the century.

Q So that since before the turn of the century there has been little discrimination against other ethnic groups, is that what you are saying? A No. I am saying that I was able to refer to measures of segregation of other groups going back that far.

[I-48] Q Yes, sir, but when— A Before the ethnic groups the measures of segregation have increased—have shown a pattern of sharp decreases since about 1920.

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Q All right. A That has not been true for the black population.

Q And this has been a gradual increasing diminishing —that is an awkwardly worded question—has the vanishing of the discrimination been an ascending thing? A Yes, I think, you know, as far as the statistical evidence suggests it with a fairly rapid process, say, up to the Second World War, and much less rapid change since then. There is a fairly low level for the European ethnic groups, but for the other groups such as the Japanese it has been another pattern where almost all the changes have been since the war. What the census calls the Spanish surname, the Spanish-American group, there is strong evidence of continuing discrimination today.

Q Well, were you able to ascertain any particular cause for the decrease in discrimination against the other ethnic groups? A No. I made no major study of that.

[I-49] Q Just sort of a natural phenomena without any specific cause that you noted in your study? A It is without any cause that I noted in my study. There is much discussion of it in scholarly literature.

Q Doctor, what does the Census Bureau define now to be an urban area? A Well, the Census Bureau uses two concepts aside from the all political jurisdictions that are presented at law. In other words, they must report for each municipality, defined legal jurisdiction. But in addition I guess ever since about 1910 they have been attempting to provide data for other districts also which are useful for social and economic statistical purposes.

One of these concepts is currently the standard metropolitan statistical area. The other is called the urbanized

area. This does not go out typically as far beyond the central city as the standard metropolitan statistical area.

The later uses entire counties. It includes much territory. It may include territory in a county that is in essence rural.

Q Excuse me.

You mean the standard metropolitan statistical [I-50] area can embrace much of a county that is not urban in nature but is rural in nature? Is that what you are saying?
A Yes. Rural in terms of low population density.

Q Right.

Now, what— A Though the question of urban and rural in character is a different one. The urbanized area, which is the other concept, is based upon a population density notion.

Q What is that population density that is the Census Bureau uses to ascertain what is urban and what is rural?
A I am not sure what the precise figure is because I have made little use of these areas. The boundaries shift from one census to another and they are not very useful for the kind of studies I have done.

Mr. Gray: If—

The Witness: I think 150—

Mr. Lucas: May he finish his answer?

Mr. Gray: Excuse me. I am sorry.

The Witness: Well, I could suggest my own recollection is something like 150 persons per square mile, but there may be some other figure. Must be more than that.

[I-51] By Mr. Gray:

Q 150 or 1,000 per square mile? A Well, we can use your figure if you have one.

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Q You are not familiar with the 1960 census designation of— A I have forgotten the figure.

Q All right. Forgotten.

Could you give me, sir, in your studies did you study Kansas City, Kansas, and Kansas City, Missouri? A Yes. They were included in my study.

Q Would you have with you the racial composition of those two cities? A No, I don't.

Q You do not.

Now, Doctor, help me with my mathematics. I have trouble.

If the racial composition of the city were 61 percent black and 39 percent white, and as I understood you, in determining for a particular school, if a particular school had 100 students in it and 61 of them were black and 39 of them were white, that would be perfect and would meet the test exactly, is that correct? A Yes.

Q All right.

[I-52] Now, I understood you to say that in order if a school were of the ratio, let's take this one, suppose it is 77 black and 23 white, what would be the index then? A Well, the index is calculated for the entire set of schools and is not applied to an individual school.

Q Didn't you apply to the school at Central Gardens? A No. I said that in this case—well, for the individual school I ascertained whether it is a school in which one race or the other race is overrepresented according to the 61 percent criterion.

Q Well, on this particular school the criteria for the locality is 61 percent black, 39 percent white. Now, this

school has 77 blacks and 23 whites. Is it overrepresented? A This is an overrepresentation of blacks.

Q Yes, sir. Of how much? What would be its index? Would it be 77? A No. There is no index for an individual school.

Q Well, how many blacks would you have to move out of that school in order to get it back to the index? A You would have to move 16 out.

Q 16 blacks out? [I-53] A In this particular school.

Q If you moved 16 blacks out you would have— A Yes, then you—

Q If you moved 16 out of it it would not be on the index, would it? A Then you have to—

Q You would have to bring in some whites? A 16 whites, yes, sir.

Q So taking out the same number as the index number is not the right answer, is it? A Well, that is the reason the index number does not apply to individual schools. The statistical characteristics that I report of the index are correct and the algebra works out, but that is for the entire system.

Q Well, if a school system wanted, and I thought maybe we had finally arrived at a formula for how to get racial balance here this morning, if a school system wanted to juggle all of its children around in such a way as it got them all to the index, how would we apply this index? A Well, there is another way of calculating the numbers to which you are referring.

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See, I reported on the index of dissimilarity [I-54] and said that one way to help understand what this figure means is to say that it gives the percentage of one race that would have to be moved in order to achieve desegregation.

Now, if you were moving only blacks and not replacing them with whites, this is strictly a hypothetical notion that would leave an awful lot of empty school buildings.

Q And an awful lot of full ones I am afraid. A But in that case you would not move 16 blacks out. You would move some smaller number. You would leave the 23 whites and you would have to figure it out for that particular instance.

Q Well, in other words, I can't use your index for that purpose, sir? A That is correct.

Q All right. A There is a much more cumbersome formula to obtain that particular number that you want, and I left it out precisely because of this kind of confusion.

Q All right, sir.

How many census tracts are there in Chesterfield County? Do you know? A I don't recall the number.

Q Do you know how many of these census tracts [I-55] in Chesterfield County include only white residents? A You mean with zero Negro population?

Q Yes, sir. A I don't know.

Q Did you calculate the index of dissimilarity, residential segregation in Chesterfield County? A No. I was provided only with the Richmond 1970 data.

Q I suppose the same answer is true for Henrico? A That is correct.

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Q You did not calculate it for that.

Now, Doctor, did you indicate that—and I understand it is awful hard to be precise with any of these matters, you don't have objective criteria for all of them, but in your discussion of the economic causes of residential segregation you said that could be maybe 35 percent.

Now, is that 35 percent of 100 or is that 35 percent of the index of dissimilarity? A I guess the figure of 35 that I had in mind was the, just the simple area of this hypothetical index that I calculate to the actual one. In other words, the actual was around 80 and the expected, the hypothetical was 28 and 29 was 35 percent of 82.

[I-56] Q All right, sir.

Is there a tendency in all major cities for people as they gain in affluence to seek the suburbs? A This is a tendency, yes.

Q All right, sir.

And do we find that generally the cost of housing and the cost of land in the suburbs is greater than that in the built-up residential areas of the city? A This is a little bit more confused because part of the reason the suburbs grew so rapidly is that land and housing were cheaper and in part by absence of vacant land.

Q In the city? A And the restrictions of building code which made construction more expensive on a small scale within the city.

Q Is there an economic factor which contributes to the moving of people to suburbia? A Well, there are a number of them among which are some increasing levels in income and differentials in the cost of residential construction.

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Q Well then, residential segregation in suburbia would, the impact of economic forces there would be greater in the central city, is that correct? [I-57] A I don't follow the argument there.

Q Well, if it is because of increased affluence of people able to seek suburbia doesn't the economic factor become one of the principal reasons for the suburbia growing as it does? Only those who are affluent enough to go. A Well, that becomes in a sense an overstatement of the character of the suburban areas in that very few people live in housing that is extremely expensive and the suburbs in every major area include a large amount of housing that is not really expensive by the standards of central city housing.

Q Doctor, if it is desirable, people seem to desire to move to the suburbs, and we have indicated that when they become more affluent they move, if it is cheaper for them out there why don't they go before they become affluent if that is what they want to do? A Well, there are different kinds and types of housing that people are seeking. Many of them went to the suburbs 30 years ago. But there is old housing, small lots in suburbia as well as this nice large lot, expensive housing. And when we talk about the suburban movement we tend to think of the new housing on fairly large lots, but this is not the total picture. That is why I am unable to—

[I-58] Q Well, in that type of suburb with the new houses and the fairly large lots, the economic factors would probably be larger, be a larger control than would otherwise, is that correct? A The economic restraints are fairly—the economic constraints are here in that people without substantial incomes cannot afford that kind of new housing.

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Q All right, sir.

Now, you have indicated that you can use your inde which would lie with the public schools. In how large a area, Doctor, can you apply this index? A I can sum marize the distribution of blacks and whites among an set of unit.

Q I see. A The number of units can be.

Q And this is the same mechanism that you use fo measuring residential segregation in the city? A Correc

Q Now, do you know the land area we are talking abou in this combined district that you have measured? A No I don't.

Q Do not know.

Well, if it is in excess of 500 square miles do you thin that this particular index is still reliable? [I-59] A Yes

Q Well, sir, I understood you to say that you found very vast difference in your results from measuring a cit block as compared to a census tract? A Yes, that is cor rect. That was referring to the individual units that go t make up the measure, not the total size of the area to whic the measure is applied.

Q Well, if there is so much difference in your accurac between a city block and a census tract how can it b accurate in 500 square miles? A In the case of elemen tary schools, which is the kind of measure I referred to, th issue is whether the average size of schools is roughly th same.

Q Sir, I am sorry. A Okay. What I said is the issu that you are raising is really a question of whether th average size of school changes throughout this area. Bu

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that is not really relevant. Even that is not really relevant to the measure.

In other words, in the case of residential segregation I have to choose some sort of area. There is no natural unit to use. City block can be all black on one side and all white on the other. It is not a unit that is necessarily meaningful in terms of the way people choose their [I-60] residences. They may like Fourth Street and not like Fifth Street. They choose a house on Fourth Street, not in the block that goes clear around it. They are not thinking of it that way. The same thing the census tract is a unit imposed strictly for statistical purposes. Most people have no idea where the boundaries of a census tract are. In the case of schools the units are administrative units that actually exist. We are using the schools that are actually there.

The question is given the elementary schools in the system how are blacks and whites distributed among them. The index gives us a summary measure of that. We could calculate it for all.

Q We could take all the schools in Virginia and measure them, couldn't we? A That is correct.

Q We could just take the ratio of black-to-white population in the State of Virginia and set that up as criteria and look at every school and see how it measures with respect to that. A The index would apply people to that situation.

Q I see. A Yes.

Q I see.

[I-61] Now, you have already indicated you did not make any particular study of the City of Richmond. You indicated that insofar as choice of people is concerned you

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did rely upon opinion polls to determine that the poll showed that more blacks wanted to live in integrated neighborhoods. Is an opinion poll more accurate the larger the sampling, the larger the percentage of the sampling? A In general, yes. Depends more on the character of the sampling than on the size of the sample beyond a certain point.

Q Would you say that the more closely allied to the question, the subjects of the question are, the more reliable the answer will be from the poll? A I am not sure what you are getting at.

Q If we can ask people their opinion about the new Colisseum in the City of Richmond if we asked people in Richmond we would probably get a much better index than if we asked people in Phoenix, Arizona, that one question, wouldn't we? A Okay.

Q All right. That is generally what I am getting at. Are you familiar with any of the studies made by advisory committees appointed after the adoption [I-62] of the Civil Rights Act of 1964, the various advisory committees for a number of states which studied housing patterns and the reasons why people lived where they lived? Have you read any of those reports? A I don't believe so.

Q So that if a number of these committees found that choice played a very definite factor, for example in Colorado, they found that very strong preference for people of various ethnic groups to live in their own—you have not studied any of these reports? A No, I have not.

Q If you were told, Doctor, that the evidence in this case has revealed that the head of the Redevelopment and Housing Authority has testified that in working with redevelopment in this city he has found a surprising tendency

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of the black people to want to remain in the area, would that—

Mr. Lucas: That is not a characterization of his testimony. He said that people in the area. He didn't describe race, Your Honor.

Mr. Gray: Well, if Your Honor please—

The Court: Go ahead. That is all right.

By Mr. Gray:

Q Would that— [I-63] A Well, that wouldn't surprise me that this could be the result of this or that this would be a common perception because I already mentioned that the exercise of choice is constrained in various ways so that it is very difficult to answer between what people would do if the situation were different than what it is.

Q One general area.

In your studies of Richmond do you find it to be an old city in which the area was probably built up years ago? A Yes, within the city itself.

Q Within the city itself it was built up say back before World War II anyway? A I assume that is the case.

Mr. Gray: Thank you, sir.

The Court: Is there any redirect?

Mr. Lucas: Yes, sir. Just a few questions.

Redirect Examination

By Mr. Lucas:

Q Doctor, in your studies of the matter what is the effect of the person coming to a community for the first time,

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coming to the housing market in a community, and his observance of the existing customs, social patterns, or restrictions that may be present in terms of his choice of [I-64] residence? A Well, in general the person would be very much bound by the situation that confronted him. Particularly as a newcomer to the community with no other sources of knowledge and no firm way of using special resources or special sources of information to learn about rare opportunities.

Q From your observance of the data, Doctor, has there been an increase in the white pupil population in the counties and a decrease in the white pupil population in the City? A Yes, sir.

Q Is an aging white population in cities a fairly common phenomena? A Yes. It is very common among the white population particularly within central cities.

Q Your testimony, Doctor, with respect to the force of economic factors and your examples, there was questioning with respect to those who could afford it moving. Has this been true of black people who could afford better housing, have they been able to move to the suburbs as well as whites? A No. The evidence is very strongly that they lead the move to peripheral areas that are in the process of [I-65] transition from predominantly white to predominantly black.

Q They have not had the same ability that whites have demonstrated, is that correct, despite economic resources? A That is very correct.

Q Thank you.

The Court: Mr. Little or Mr. O'Brion, did the redirect prompt anything?

Mr. Little: No.

The Court: Mr. Gravatt, any further questions?

Mr. Gravatt: I want to clarify one thing, Judge.

The Court: All right, sir.

Recross Examination

By Mr. Gravatt:

Q Dr. Taeuber, the last answer that you gave Mr. Lucas with regard to blacks moving into the periphery of the general area with which they have been previously contained, is this tendency to move into the periphery area, is this a national tendency? A Yes. This is what was examined in great detail in those ten cities that I mentioned earlier.

[I-66] Q And this is characteristic of what happens all over the United States and not just what happens in Richmond? A That is correct.

Q And what is happening in Richmond in this respect is similar to what is happening in every other standard metropolitan statistical area? A That is essentially correct.

[I-67] * * *

IRVIN G. HORNER

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lucas:

Q State your name and occupation, please. A My name is Irvin G. Horner and my occupation is a general businessman of Chesterfield County.

Q Are you a member of the Board of Supervisors of Chesterfield County? A Yes, I am, sir.

Q How long have you held that position? A Since January 1, 1948. Serving in my 24th year.

Q 24th year? A Yes, sir.

[I-68] Q I placed on the table there, sir, a copy of Plaintiffs' Exhibit 117. I ask you to turn to the minutes of the Board of Supervisors'

[I-69] * * *

Q Turn six pages to the meeting of April, 1956.

Would you read that paragraph beginning, [I-70] "This day the matter of appropriating money"? A April 30, 1956 minutes.

[I-71] * * *

The Witness: "This day the matter of appropriating money for schools for the coming year 1956-'57 was discussed by the board. Mr. Britton cited the fact that it was his belief that citizens of his district would support the $3,500,000.00 bond issue to be voted on May 29, 1956, provided some safeguards were effected to prevent the integration of races in the county schools. Upon consideration whereof, and on motion of Mr. Britton, seconded by Mr. Driskill, it is resolved that this board requests the Commonwealth's Attorney to prepare the necessary resolution to provide for the payment of the operational expenses for the county board on a 30-day basis."

By Mr. Lucas:

Q August 14, 1956, please, the last page in the minutes of that day bearing your signature

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The Court: Page 83.

The Witness: Last paragraph, sir?

By Mr. Lucas:

Q No, sir. The paragraph beginning, "This day the Executive Secretary." [I-72] A "This day—

Q Fourth from the bottom. A All right, sir.

"This day the Executive Secretary read a letter from the Honorable Thomas B. Stanley, Governor of Virginia, and the Honorable Lloyd C. Bird, Senator from this district, thanking the board for its approval of the proposed action on the school problem which letters were ordered received and filed with the board's papers."

Q At that time, sir, there was a special session of the General Assembly of the Commonwealth of Virginia. Do you recall the subject matter of the letters referred to in these minutes? A No, sir, I do not.

Q You were on the board at that time? A Yes, sir.

The Court: Look at page 82, the page preceding, fourth paragraph from the top, Mr. Horner. That may help you.

The Witness: I assume this could be the resolution that they are talking about.

The Court: It doesn't refresh your memory?

By Mr. Lucas:

Q Would you read the paragraph, please, sir? [I-73] Read it out loud.

The Witness: The one just cited by the Judge?

Mr. Lucas: Yes. Please.

The Witness: "On motion of Mr. Driskill, seconded by

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Mr. Goyne, it is resolved that the following resolution be adopted:

" 'Be it resolved, that this Board of Supervisors commends the Honorable Thomas B. Stanley, Governor of the Commonwealth of Virginia, for his action in recommending a plan to the General Assembly for continuing segregation in the public schools of this Commonwealth, and be it further resolved, that the Executive Secretary of this board be and he hereby is directed to forward a copy of this resolution to the Honorable Thomas B. Stanley, Governor of the Commonwealth of Virginia, and members of the General Assembly representing Chesterfield County.'

"On motion of Mr. Britton, seconded by Mr. Driskill, it is resolved that the—

By Mr. Lucas:

Q I think that applies to another matter.

The minutes of January 29, 1959, directing your attention—

[I-74] The Court: Page 97, I think, Mr. Horner.

The Witness: What paragraph, sir?

By Mr. Lucas:

Q Would you read the paragraph beginning, "On motion of Mr. Britton," containing a resolution? A "On motion of Mr. Britton, seconded by Mr. Driskill, it is resolved that the following resolution be adopted:

" 'That the Board of Supervisors of Chesterfield County doth urge the members of the General Assembly of Virginia, now in special session, to enact such laws as will hold the line against integration of the races in the public schools of this Commonwealth.

" 'Further, that this board reaffirm its previous stand against the usurpation of the state's sovereignty by the

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Supreme Court of the United States and pledges to the Governor, the Honorable J. Lindsay Almond, and to the Honorable A. J. Harrison, Jr., Attorney General of Virginia, its continuing support in this fight to preserve constitutional government.

" 'Further, if it is necessary in order to preserve segregation in the public schools of this Commonwealth, that all public schools in this state be declared in vacation, or placed under the supervision and control of [I-75] the General Assembly until a plan can be devised to prevent integration of the races in our public schools.' "

[I-85] * * *

Q Mr. Horner, have you not recommended a revolt in the form of a school boycott, separate private school system, or even freedom of choice school assignments in letting federal troops see what they can do about it rather than integrate the schools in Chesterfield County with the City of Richmond? A Sir, you quote from a newspaper clipping.

Your Honor, I would like to—

The Court: Suppose you answer it yes or no and then make any explanation you want, Mr. Horner. You don't have to just answer yes or no, but the question was did you make that statement?

The Witness: This is what I would like, with your permission, to make amplification on.

The Court: You may, but first did you make that statement?

The Witness: Yes, I did.

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The Court: Now you may make any explanation [I-86] you deem appropriate.

The Witness: Sir, that statement was made shortly following the Supreme Court's decision, or handing down of the Charlotte-Mecklenburg case perhaps late March or early April of this past year.

I would like for it to be understood the condition and the status of the county of which I am Chairman of the Board of Supervisors was at that time.

We had been harrassed by the City of Richmond from 1961, and of course annexation was filed December of '61. This suit stayed dormant until '65. After '65 it became active. In the meantime through the General Assembly there were studies of the Hahn Commission and Aldhizer Commission in the form of a possible constitutional amendment that took place. We were still in active annexation which went to trial the fall of '68. This trial continued on into '68 and '69.

As you know it ended in the spring of '69.

Our people of Chesterfield County had frowned as a unit because they had had so many fights, so many scuffles to go through with that people of our county were, are and were at that time, bitter to the continued harrassment of the people of the county. With this atmosphere in the annexation case they told us 10,000 students were an [I-87] adequate number of children for Chesterfield to have in Richmond, of course not only right following the annexation suit, they even brought another annexation suit late in '69 or late in '70. And when this Charlotte-Mecklenburg case was handed down the people of Chesterfield County were fit to be tied. I acted or reacted in a manner that I am confident that the people of the political jurisdiction felt because I was registering their feeling.

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I would like at this time, if it is appropriate, the statements I made, this one and there were others made, they were not intended to the Honorable Judge of this court to be a personal attack on him. If they were considered to be so I wouldn't [*sic*] take this opportunity at this time to apologize for this.

The Court: You need not apologize, Mr. Horner. You have First Amendment rights to say anything you deem appropriate.

Mr. Lucas: Your Honor, I did not intend to go into any matter of this sort at all.

The Witness: I think the question you asked, though, had to lead to that because they both came one one day and one the other in the press.

Of course my statements were made to a combination of TV and press.

[I-88] I would like to finish, sir, that those remarks, sir, that I made were not necessarily recommended by me or that they would be done. They were things that had been done in other areas and could be attempted in this area. They had been registered to me through the citizens and I believed in those things that I stated, that firm action by the people was necessary to indicate and show that they were not pleased with the way that conditions were going and the un-Americanism that they believed was taking place because this Charlotte-Mecklenburg case of course made the people afraid that their community schools would be destroyed.

Most of the fathers of children in Chesterfield County, like other places, were in World War II, Korea, and now Vietnam War are fathers of most of the children in our school system. It is impossible for anybody to realize the

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feelings that these people have relative to this matter. And I know from my own personal experience of going into World War II that the strongest, one strongest asset that this country has is this community and when you destroy its community and the schools—the strongest things that a community has are its churches and its schools—if you destroy its community schools you have taken one big factor out of the strength of the community. And I sincerely [I-89] believe to the bottom of my heart that communities must be strong for this nation to be strong.

The Court: Go ahead with your question, Mr. Lucas.

By Mr. Lucas:

Q Mr. Horner, you made reference that this statement was in response to the Swann case. Did you not also at the same time make reference to leading this revolt to prevent the county school system from being consolidated with Richmond? Is that not also your statement at that time? A Yes, sir, very much so. We were much opposed to consolidation with Richmond. We have been harrassed and hounded for many, many years. We are a political jurisdiction bounded by water and we think we are entitled to live a life without continual interruption of the adjoining city. We do cooperate with Richmond, have cooperated with them, and always will cooperate with them. But that doesn't make it a reason that we are ready to submit to consolidated schools with the City of Richmond.

Q Mr. Horner, did you also recommend that Chesterfield County follow the course of action taken by Henrico County and withdraw the county funds from a bank whose official was a member of the Richmond School Board? [I-90] A This statement was made first by, I believe, the Chairman of the Henrico Board relative to withdrawing

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funds from the bank of a councilman. This statement he made appeared in the press prior to my statement and, of course, the press followed me up after hearing that statement and I suggested that it could be a possibility. I don't remember the exact wording in the press, but it could be a possibility.

I followed that up with further mature thought and Chesterfield did not do anything. I did not even carry the matter to the governing body for any consideration.

[I-93] * * *

PRESTON C. CARUTHERS

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lucas:

Q State your full name and occupation, please. A Preston C. Caruthers. I am a builder in Northern Virginia and currently President of the State Board of Education.

[I-103] * * *

Q Do you think, sir, that the solution to educational problems should be restricted by any particular boundaries? A I am not sure I know what you mean really.

Q You are charged as a member of the State Board with the responsibility for overseeing public education in the State of Virginia and have new charges to approve the quality of that education? A Yes, sir.

Q Do you think that your efforts for improvement of that quality should be restricted to political boundaries of

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school districts, for example? A Well, we have to operate within certain [I-104] practicalities. Sometimes it isn't a matter of whether we want to or not. By law we are required to operate a certain way. Your local school district has certain authorities and responsibilities and we certainly can't—we certainly have to recognize their authority in dealing with school divisions.

Q The state already—I won't argue with you. A I don't mean to be argumentative, really.

Q I know that.

The state already operates programs which cross regional school district lines, do they not, vocational education being one of them? A Yes, I think that would be right.

Q Programs for the retarded? A Yes, I think that would be correct.

Q My question to you, sir, aside from legalisms or any opinions of the law, do you think that the solution to educational problems should be limited by any arbitrary boundaries such as the school district boundary in the light of today's educational needs? A Insofar as programs can be more effective, such as you mentioned, vocational schools or sharing, I would agree with you, yes, sir.

[I-105] Q Any educational program that can be better served by ignoring those lines, you would be in favor of? A If it has educational significance and importance, I can see some value in that, yes.

Q Do you think segregation in the public schools is of educational significance in Virginia in 1971? A Provided I think it calls for a statement which has not been shown in the record.

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The Court: Well, take it as a hypothetical.
The objection is overruled.

The Witness: I can't help but believe that segregation or integration is playing a major role in what is happening in education today. The subject itself is on the minds of teachers and pupils and yes, but it is reflected a number of ways. I am not sure of all of the ways and ramifications it has, but certainly it has an effect.

[I-128] * * *

HARRY ELMORE

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Little:

Q Would you state your full name for the record, please, sir? A Harry Elmore.

[I-129] * * *

Q Mr. Elmore, what is your present position with the State Department of Education? A I am Deputy Superintendent.

Q How long have you been Deputy Superintendent, sir? A Since December, 1960.

Q Prior to that I believe, sir, you were a Division Superintendent? A That is correct.

Q Mr. Elmore, yesterday Dr. Green indicated that you, or one day recently, Dr. Green indicated that at one time you had a job comparable to the one he has now. Is that true? A Not exactly. I was assigned by the State Super-

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intendent to administer the state's responsibility under the Civil Rights Act in my present capacity. I was then Assistant Superintendent, now Deputy Superintendent, but I handled those responsibilities since July, 1964.

Q And in that job you had the primary responsibility within the department with respect to any matters of desegregation, is that true? A That is correct.

[I-130] Q When did this first occur? When were you given this duty, sir? A The Civil Rights Act, I believe, was passed July 2, 1964. July 6, 1964, the State Superintendent requested that I go with him to Washington to attend a briefing in the Office of the United States Commissioner of Education. Following that there were several briefings by the U. S. Office of Education and Dr. Wilkerson with the knowledge of the State Board requested that I assume responsibilities of the Department of Education in carrying out the duties of the State Board and department under the statement of compliance which was executed by the State Superintendent on behalf of the State Board on February 12.

Q Of 1965? A Right.

Q Now, prior to that time was there anyone in the State Department of Education who had the primary responsibility for desegregation problems in general that might have existed in the state? A At that time the major role or the primary, only role of the Department of Education. When I use the term "Department of Education" I mean the State Board with the department as the administrative arm. So I will use [I-131] "department."

Q Yes, sir. A In this briefing in Washington and other areas of the state by the U. S. Office of Education

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and consultants for HEW with the thrust of these early months, early years, was upon legal compliance, that is, meeting the legal aspects of desegregation, dismantling the dual school system. We proceeded from the briefings which continued during the summer of '64 into the early fall and in January, and I extend the question because I think this is in answer to what we were responsible for, we began a series of meetings with Division Superintendents, regional meetings throughout the State of Virginia.

Q Well, Doctor, I don't want to interrupt you. I want to give you an opportunity to give any answer you want, but my question was prior to 1965 or the part of '64 when you had these meetings who, in the State Department of Education, was given the responsibility for desegregation problems? A I had the responsibility. And there is no feeling at that time that it was necessary to set up any additional staff.

And I toured the state and met with Division Superintendents in regional meetings and, let me say this. [I-132] The desegregation program was in two aspects. We move into the second program in 1970.

The first phase was legal desegregation. The second phase was integrating desegregated school systems. That was when we brought in the technical assistance program because we had to fan out into the divisions, give in-service training. So as a background, I assume I was the only one assigned by the department, and I don't believe that we needed anybody.

Q I see.

So the answer to my question is that— A I.

Q You, from the time you first went with the Board in 1960? A Right.

Q Do you know whether anybody prior to 1960 had any responsibility in the state with respect, of the State Board, with respect to desegregation? A Prior to the passage of the Civil Rights Act of July, 1964, no.

Q There was none? A No one.

Q That's right, sir.

Because Virginia was not dismantling the dual [I-133] school system in the 1950's, were they? A Not to my knowledge.

Q All right, sir.

Now, coming back to your duties under the Civil Rights Act that required you to work with officials of HEW and officials with the Justice Department, is that not correct? A That is correct.

Q Can I assume, sir, that you made their job as easy as you could, anyhow, in your dealings with them? A Whose job?

Q The officials of HEW that you worked with. A Well, I expect they helped to make my job as easy as it could be.

Q Well, but— A We worked cooperatively, yes.

Q What? A We worked cooperatively.

Q Cooperatively? A There was very close liaison between HEW and the department. We conferred on many occasions with consultants from HEW in Washington, with Division Superintendents.

Q And it was with a spirit of cooperation, wasn't [I-134] it, Mr. Elmore, that you were trying to solve these problems? A Well, no. I wouldn't subscribe to the word

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"cooperation." I will say that under the statement of compliance of the State Board with HEW, and it can be read, the Board and the department were assigned the responsibility of informing and advising with local school officials, keeping them informed of the latest developments, guidelines, desegregation plans. And it is spelled out in the statement of compliance which was executed February, 1965, of working with school divisions to secure assurances of compliance from the school division.

Q From them, nothing about encouraging them to comply, was there? A Yes. I would say that with the passage of the Civil Rights Act there was a legal obligation, a moral obligation upon the State Board and department to effect desegregated school divisions under provisions of the Civil Rights Act.

Q So again is it fair to say then that you did encourage the school divisions to come into compliance with the act? A School divisions, yes.

Q Yes. [I-135] Mr. Little: May I approach the witness, Your Honor?

The Court: Yes.

By Mr. Little:

Q I show you two pieces of paper on the stationery of the State Board of Education, dated March 19, 1969, and ask you to look at the second page. Is that not a memorandum that you wrote, sir? A That is correct.

Q Now, Mr. Elmore, subject to the Court's approval I am going to read and then ask you questions about it if I can. This is dated March 19, 1968, and the—

The Court: No.

Mr. Little: 1969, I beg your pardon. 1969.

By Mr. Little:

Q The first name that we see on it is Severenson, request to Mr. Wingo that the department so and so. Now, Severenson was an official at HEW? A She was in the regional office in Washington—in Charlottesville.

Q Now, who was Mr. Wingo, sir, that is the person on your staff? A Yes. Mr. Wingo was in the department.

[I-136] Q Now, HEW requested Mr. Wingo that the department secure the following information, the Justice Department through her office, from Accomac, Nansemond, and Westmoreland. And there are four items listed there. Transportation data, such as maps, routes, boundaries; data on student and faculty desegregation; federal funds received from various federal programs; federal funds received since 1964 for buildings and real estate.

Then we see on the letter "Advice which I gave Mr. Wingo:"

Now, that is you giving the advice, isn't it, sir? A Yes.

Q "Call Severenson and suggest that requests be made in writing from Justice Department or her office to the divisions to furnish specific information, sending copies to Superintendent of Public Instruction. If the localities refuse, write Superintendent of Public Instruction requesting that our department furnish the information."

Then we find, "In this event—" now, this is in the event that the State Board were to get a letter, right? A Right.

[I-137] Q "We would supply items three and four." Now, three and four deal with federal funds and so forth. They are not as a public—they are a matter of public

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record anyhow, weren't they? A Well, the department was responsible for disbursing federal funds.

Q So they were matters of public record. You weren't really giving them too much there, were you? A Well, the data on student and faculty desegregation and plans, data such as maps are public information in the local school board offices in the same way as they are in the state office.

Q Well, let's go on. "In this event we would supply items three and four (public records)." Then we have this phrase, "And say that we do not have one and two, that the department does not keep such detailed records, that the same are available only through the local school authorities." A Well, let me elaborate on that. It has always been the practice that whenever requests are made through the department for specific information from the local school divisions, we have always referred them to the local school officials. In this instance, and in many other instances in the early stages, and even up this late [I-138] of desegregation, we have attempted to maintain that kind of communication and sending information requesting, sending from the regional office of HEW to the local school divisions. The compliance agreement, the assurance agreement is between the local school division and HEW and not between HEW and the state department.

We are under a separate statement and assurance of compliance to assist and aid the localities.

Now, I feel the same way now, and gradually it has worked around to the point where HEW requests information directly. An example is the fall reports of enrollments. They also communicate to the office and say how do you want us to handle these questionnaires, shall we send them

to you or to the locality? We have established a modus operandi whereby HEW seeks specific information from the locality with respect to their own compliance.

Q All right, sir. A We were trying to keep it within that perspective. We were not trying to negate anything.

Q Responsibility, of course. A Right.

Q Now, when you say, say that we do not have one and two, that was just an accidental way of expressing it, saying that we don't have. In other words, you had no [I-139] data on student and faculty desegregation? A That is correct.

Q None? A Except in the fall reports. This was March. Now, if they were seeking later information they would have to secure it from the local school division.

Q But you had the fall data, didn't you? A And they knew we had the fall data and didn't want that. They wanted later data.

Q All right, sir.

Let's go on to the next paragraph. "Should Severenson insist that we secure the data from the local districts, state that the compliance agreements are between HEW and the local school districts," which you have just said, "And if they refuse to supply Justice Department or HEW, our department is not in a position to coerce the districts into supplying the data. Coercive action should be applied by the Federal Government for whatever ends are justified and lawful under the Civil Rights Act and federal regulations."

Now, I have two questions. You previously testified that you were working—it was a spirit of cooperation with these

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officials. You also indicated that you tried to make their job easy.

[I-140] Now, many times in this you could have picked up a telephone and gotten this for them from a district superintendent, couldn't you? A We had a relationship to maintain with t. school divisions also. The cooperative—

Q Would you answer my question and then explain it, sir? A All right. Will you repeat your question?

Q Many times you call the district superintendents and just ask them to give you the data or any type of information they wanted. It is not uncommon for you to pick up the phone and call a Division Superintendent and ask for something, is it? A For information to supply the department?

Q Right, sir. A Yes.

Q All right. So that is not unusual. That wouldn't have been unusual to pick up the phone? A To pick up the phone and call them for information that our office wanted, but it would have been very unusual for us to have picked up the phone and called a school division and said, "You supply this information." We have attempted to maintain communication between HEW and the locality. You have complete records [I-141] from our files. It is quite obvious. You can see from the records that we have advised HEW to give us copies of every communication that goes to the locality and the locality a copy of every communication that goes to HEW.

Q All right, sir. A We have attempted not to be a middleman in bringing about local compliance. We work with the school divisions in advising, consulting, informing

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and assisting. But we have never felt that we should adopt a stance or posture of being a means of getting information that HEW should get from the locality and it is a lot easier, frankly—we did not have that information at the time.

Q Let me ask you this, sir. Do you regard a phone call as a coercive measure?

I mean do you—just answer the question, sir, and then of course you can talk as long as you want. A A phone call?

Q Yes. To a district superintendent asking for something. Is that coercion? Would that have been coercion in your judgment? A At the time, possibly you don't know Division Superintendents as I do. I have known them for years. I have been one for 17 years. They resent—they did—

[I-142] Q Would you answer my question, sir, and then explain it? A All right.

Q Was a telephone call, under those circumstances, coercion? A And I was attempting to answer your question by qualifying the word "coercion." Superintendents, many of them, are very sensitive and would have, in my judgment, somewhat jeopardized our ability to work with them as closely as we have. If I would be put in a role of calling and saying, "Submit this information to HEW," I think it would have been in a way.

Q You think that would have been coercion? It is fine if that is your answer. I just want to get the answer. The phone call would have been or had a coercive effect that you didn't think was advisable, is that a fair statement? A I think it would have put the department in a role where

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they would have been less acceptable in working on a cooperative basis if we had been calling and asking them to send information to HEW.

Q Fine. A And now they write the localities. They don't come through our office for that type of information.

[I-143] Q But you did say earlier that you were trying to encourage the school districts to comply, did you not? A Absolutely.

Q Wouldn't a phone call have been a little easier way to save confrontations with these horrible federal authorities? A Now, you are putting words and expressions in your question that—

Q Excuse me. Let's read the next page and see if I am putting words in the wrong place.

"In addition, I have the following thoughts:

"The State Board's compliance agreement does not require our collecting data from the school divisions for transmittal to HEW. Our role with localities is to advise, consult, inform, and encourage compliance. We are required to submit information as may be requested by the Commissioner as it affects the Board's compliance in its department operations.

"The guidelines (regulations of HEW) require that localities submit supplementary information as may be requested by HEW."

Now, this paragraph, I draw your attention to, sir. "I do not think it is sound, politically or [I-144] otherwise, for the department to assume the role of a coercive collection agency for the Federal Government in instances where local school systems refuse to supply the information and are willing to forgo federal aid. The Federal Government

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has ample authority to exercise over localities if it desires to institute suit through the Justice Department to place such localities under court ordered desegregation plans. It would be ill-advised, in my judgment, for our department to align itself with the Federal Government in this confrontation with Accomac, Nansemond, and Westmoreland."

Now, let me ask you a few questions. I would like you to talk at some length if you will, sir, on what you mean you did not think it is sound politically. What political considerations were concerning you at that time? A As far as I was personally concerned, none whatsoever, but I was concerned with the problem in working with school divisions throughout the state because of the attitudes of local boards of supervisors. Some school boards that were going through the throes of gradually coming to face up to reality that they had to comply and would comply eventually, but we were in the role at the state level of working with all school divisions [I-145] regardless of their political structure, their state of acceptance or not acceptance, and we did work with them upon request. That has been a basis all through Title IV technical assistance programs, and our work under our statement of compliance, our working with the localities has fundamentally been on a request basis.

Q Is it fair to say that the State Board never has taken any initiations in the field of desegregation? A Any initiation?

Q Any initiative, excuse me. A Is that the State Board that has never taken any initiative?

Q Initiative. Up to the date you wrote this letter, let me qualify it. A Yes, very definitely.

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Q It is fair to say that? A That the State Board has taken initiative.

Q No. Up to the date of this letter now, sir. A Yes.

Q Right. Initiative in encouraging the disestablishment of a dual school system. A That was the function of my office. I think you are picking on a minutia. If you would permit me I am [I-146] wondering frankly if you wanted to get an accurate picture of what the department has done in the way of assisting localities.

Q I don't mean to interrupt you, but I think you will have ample time to present that later. A All right.

[I-146] Q I think we will confine our remarks to this memorandum.

Mr. Gray: If the Court please.

The Court: Of course, as you know, I am very much interested in some of the things that Mr. Elmore is suggesting that he wants to present, but I think counsel is entitled to ask their questions and I am going to let him, just as I am going to let you all do it.

Now, I have avoided asking any questions of any of the witnesses except by way of explanation and I would hope I wouldn't have to start and break that record with this witness. We will see how you all do first.

Mr. Gray: I agree with all that, Your Honor, except that I am afraid that we are in the process, that sometimes happens in courtrooms, that the answer that he gave is not the answer that he might have intended.

[I-147] The Court: He hasn't given the answer ye as far as I am concerned. I think his answer, as I understand it, would be that Mr. Little's suggested statement i not factual, is not correct.

Mr. Little: He has given that answer.

Mr. Gray: That is fine.

Mr. Little: And I accept that, sir. All right, sir.

By Mr. Little:

Q Now, let's come back to these political considerations. I am just asking what you personally thought. Did you think they were more important than the disestablishment of a dual school system? A Not at all, but I did not want to throw anything in the way of smooth operation and working with the localities. Let me give you an example.

Without naming a division, which I don't do now, let's take a division in which there was a great deal of public sentiment against desegregation.

The Court: Pick any one you want.

By Mr. Little:

Q That's right, sir. Any one in the state, sir. We will concede that public opposition in all school districts. [I-148] A All right. Now, it would appear to you to be a very minute type of thing, but I have, through the years in working in public office and schools become very sensitive to the problem that administrators have in developing plans with the consent and support of the people. What would have happened, very easily in any one of these school divisions if I had called and said, "I understand you have refused to submit this information to HEW and I am

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asking you to do it," well, I don't have the authority to coerce a school division to send the information in. Their compliance with Title VI of the Civil Rights Act is simply to get federal funds. If they don't want to get federal funds they don't have to send them anything. And for me to step in and do that type of thing wouldn't have been an hour before there would have been a call into Richmond to want to know why Harry Elmore is trying to tell us what to do down here. I thought it was diplomatically sound. I grant maybe the word politically was a bad connotation, maybe I would have used another word. I would have had I known you were going to submit this.

Q I think I agree with you, sir. All right.

One or two more questions then, sir. But isn't it clear this document will speak for itself, sir, that [I-149] is one good thing, but you wanted the State Board to keep a low profile, and you wanted the burden of coercion on the federal authorities, did you not? Didn't you think that was wise at the time? A Well, I think you are putting words in my mouth or a question that is somewhat loaded. I would say that the department has operated since 1964 in assisting school divisions in coming into compliance without a great deal of publicity. We have gotten quite a bit of criticism from it because we don't—have not gotten up on the rooftops and told everybody what we are doing. We did operate in a low key, but we operated in, I think, the most effective way that we could operate during these years.

I believe the record will bear out the success of it. We have had less turmoil in Virginia than we have had in many states. You will find every school division today in compliance. They have a desegregation plan that has been approved by HEW or by the courts. The last one, Newport News, that is one that we worked with at the request of

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Jerris Leonard. That was introduced the other day, but they didn't bring out the fact that we had worked with them for three months. The reason was because HEW and the Justice Department had received complaints of discrimination, and that was one of our [I-150] responsibilities to follow up on it.

Q Well, Mr. Elmore, are you finished? A Yes.

Q There is no mention in your memorandum about your thoughts to Mr. Wingo about any denial of constitutional rights that was resulting as a result of all this go-slow go-easy, or anything like that, but you were concerned about that too, I am sure, weren't you, sir? A Concerned about what now?

Q The denial of constitutional rights that is captioned by the continued operation of a dual school system. Does that concern you? A Very much. And if and when I get an opportunity to get off of this little piece of minutia and get to what we actually did I think I can prove it.

Q Fine, sir.

All right. You will have that opportunity, I assure you sir.

Now, you sent two copies of this minutia, as you use the term, one to Dr. Wilkerson, I believe, and one to Mr. Wingo, is that right? It shows on the bottom, page two. A Yes. Yes, it is on there.

Q Did either one of them disagree in any way [I-151] with the thoughts that you expressed in this letter or this memo? A I doubt if Dr. Wilkerson ever saw it because he is such a busy man, and while there is responsibility it may be in the file, I doubt if he ever saw it.

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Q To your recollection neither Mr. Wilkerson nor Mr. Wingo ever came to you or called you and said, "I disagree with some of your thinking in here." That is all I am asking. I don't know that Mr. Wilkerson ever got it either. A No. And I think that was the reason, possibly.

Q All right, sir.

Speaking of Mr. Wingo, would you identify him, sir? A Mr. Albert Wingo, when he retired a month or two ago, he was Special Assistant in Charge of Federal Programs. Prior to that he held a number of other positions.

Q With the State Department of Education? A Right.

Q Do you know how long he was there roughly? A No, I don't.

Q Do you remember whether or not while he was [I-152] employed by the State Department of Education they set up something called the Pupil Placement Board? A Yes, I think I have heard of it.

Q Yes, sir.

And didn't he serve on that? A He was appointed to it by the Governor.

Q And didn't he work on the Pupil Placement Board and at the same time work in the Department of Education on sort of a part-time basis? A That is correct, yes, sir.

Mr. Little: Thank you, sir.

The Court: Gentlemen, I think we ought to correct, or I want to correct the record of any innuendo when I said, "Pick any division." That may have been unfair. There may have been some divisions that the Court has received some cooperation from.

[I-153] * * *

Cross-Examination

By Mr. Lucas:

Q Mr. Elmore, part of this might be described as the low-key cooperative effort of the State Board of Education, was to facilitate school districts in obtaining their federal funds and meeting the requirements of the federal program at that time in Title VI, is that correct? A What is the question?

Q Let me see if I can restate it for you. A I would like for you to.

Q Was it part of what you have described as the low-key cooperative effort to assist local school districts in obtaining all of the federal funds to which they might be entitled under the various programs by maintaining their compliance with Title VI of the Civil Rights Act? A We assisted localities in complying. And I don't think the reference to low key would have any effect upon the actual timing of coming into compliance. A person can be in low key and possibly accomplish a lot more than someone who is in a higher key.

[I-154] Q I am not disagreeing with that. I am saying that is the way you described your efforts, is that correct? A Well, I don't remember whether I used the word or Mr. Little.

Q Was it the policy of your office, State Department of Education, to secure all of the funds which might be available under various federal programs for the local school districts to assist them in every way possible? A I think in the earlier years of federal funds, and even up to now, we run into the administrative difficulty of the Federal

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Government waiting until the last minute to appropriate funds and then expect you to use them yesterday.

Q Mr. Elmore, I am not interested in your opinions of the Federal Government. I am interested in what the office, your office did. I realize there were problems about when Congress funded a program. What I am interested in was finding out what the policy was with respect to assisting districts with whatever difficulty, whether it was delayed Congressional appropriations or whatever. A I am trying to anticipate your point. I know that the department made every effort to utilize federal funds within time limitations and staff capability, but I know there were federal funds that were not completely [I-155] used at different times. And I can—I am reasonably certain that there were many funds available that we did not use because of some of the reasons that I have indicated, and possibly because of priority of programs. But I can't speak to that point because I had nothing to do with the administration of federally-supported programs.

Q You did feel that it was somewhat ridiculous for the Federal Government to require the State Department of Education to certify that it had the ability to perform its responsibilities? This was like certifying to your own existence, is this correct? A I don't understand your question.

Q Well, you wrote another memo, didn't you, Mr. Elmore? A I wrote a number of them, yes.

Q You wrote a memo saying that you thought it was rather ridiculous to require the state department to certify to its ability to carry out its program? A I don't recall. If you could show it to me.

Q I will in a minute.

Are you familiar with the emergency ESAP-funded school districts program, emergency funds for desegregation? A Would you show it to me, please?

[I-156] Q Are you familiar with the federal program? A Yes, ESEA.

Q No, no. Talking about the emergency funds to assist school districts in desegregation. A Yes, I am.

Q And do you know how the formula was determined for deciding how many districts were eligible for it? A No, I do not.

Q What role did your office play in assisting districts in obtaining the funds for this process? A We sent out a Superintendent's Memo advising them of the availability of funds under the technical assistance program, which was part of our responsibility in assisting under date of July 16, 1965, Superintendent's Memo that was sent to Division Superintendents, services available under Title IV of the Civil Rights Act. This office has been advised of the services available through the technical assistance program under Title IV of the Civil Rights Act. Copy is enclosed of the functions of the technical assistance program.

I can go on further if you would like.

Q Do you recall how much money was received under that program? A No, sir. No, sir, I wouldn't attempt to [I-157] recall how much money was received.

Q Mr. Bob Green, or Dr. Bob Green who succeeded to your function in the state department, did he not? A That is correct.

Q When did he take over, do you recall? A We submitted a technical assistance program proposal to the Phila-

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delphia regional office, which I prepared with Dr. Wilkerson's authorization, December 1, 1970. That was the date it was submitted. Dr. Green was employed under that proposal for technical assistance program. He was employed February 1.

We received a fund to carry out that program.

[I-159] * * *

Q Under the 1964 Civil Rights Act State Departments of Education were eligible for funding for a special assistance program similar to the one instituted February, 1971. Many State Departments of Education applied for and received grants and had full staffs assisting school districts in the process of desegregation. Was it another one of the political reasons, sir, why the state department did not apply for such a grant until 1971? A I don't think so. No, I will answer that by [I-160] referring to earlier comments of Mr. Little that the desegregation efforts of the department were actually divided into two major parts. The first had to do with what I would refer to as dismantling processes, administrative, legal. I had been in the department for four years at that time. I worked closely with Division Superintendents in our annual meetings. I had been one of them for 17 years. The truth of the matter simply was, is, that we felt that I could handle that phase of the program, and anyone with the background of experience that I had could possibly have handled it better, but anyway that was the decision. It involved largely regional meetings with Division Superintendents, HEW compliance forms, explaining, working with them, holding many regional meetings following the briefings that I described. We did not, in our judgment—I did not feel that it was timely to bring in people from the outside who

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did not know the operations as well as I did. During that period it was felt that we could make greater progress in working individually and in group meetings and in regional meetings with superintendents than we could by bringing so-called technical assistants who could possibly disrupt much that we had already done.

Q Could you have taken people from one of the departments and established them as a part of the team [I-161] pursuant to that federal program? You didn't have to hire from the outside, did you? A Well, I think you are getting over now an area of educational administration, and I believe I know more about that than you do. You know the law. I don't believe we could take anyone out of the department without the background of the training in this field. I had had it. The people in the department were trained in different division responsibilities, services, teacher education, academic areas, libraries, secondary education, elementary. None of these people had the type of competence. They are outstanding in their areas, but I did not feel that it was the time to bring in anyone from the department and train them and begin sending them out in the field. The time came, and I think it was a matter of judgment, you may disagree and others, but it was our feeling that we had reached the point in December—we started October, 1970, to prepare for the technical assistance program through conferences in Philadelphia.

The State Superintendent and I made a decision that we have overcome. The school divisions now have legally complied, substantially.

Now, we need to move in and integrate the desegregated schools by providing in-service training for [I-162] teachers, workshops, and this is what Dr. Green and his staff have

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been doing in the second phase of desegregation since February, 1971.

Q Are you saying that there is no more opposition to desegregation that the superintendents have to deal with? A I am not saying that.

Q Let's go back a minute to the point. In other words, it was a conscious decision that was your administrative judgment not to apply for this assistance available under the '64 act, is that correct? A Not to bring a staff of technical assistants in during that period when—

Q Not to apply for the funds is the question, sir. Can you answer it? A Well, my answer is that not to bring in the particular technical assistance program which is the equivalent of answering your question.

[I-168] * * *

Q Do you think it would have been easier to the local superintendent if the State Board of Education had taken a strong affirmative view as a part of its responsibility for the administration of public education and insisted that local school districts on some sort of uniform basis act jointly to desegregate their school systems? By jointly I mean at the same time. A Yes, I know what you are driving at. Let me say this. I have stated twice already that the legal responsibility of the State Board and Department is simply to assist and inform localities in effecting compliance with the Civil Rights Act and the regulations of HEW.

In addition to securing, I think that is the word, from each division an assurance of compliance, which takes one of three forms. HEW 441, complete compliance right now. 441-B, submitting a desegregation plan within a given pe-

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riod of time to dismantle the dual system, or a court order.

These were our responsibilities and they are spelled out.

Now, I turn in answer to your question, and I am coming to it, we have received from the United States Commissioner of Education April 16, 1965, a supply of [I-169] documents entitled Supplementary Information for School Districts Regarding Compliance with Title VI of the Civil Rights Act. They were sent from the U. S. Commissioner of Education.

In that statement, and I quote, "Desegregation Plans: The responsibility for devising and implementing a reasonable and adequate plan for desegregation rests with the local school district."

We have stayed within our posture of working with divisions, advising, consulting, informing, holding regular meetings, explaining, and whenever a complaint, and you said I would have an opportunity, I don't know whether I would like to have it or not here on the witness stand but—

The Court: Try just to respond to the questions, Mr. Elmore.

The Witness: Yes, sir.

The Court: We have five lawyers that still may get around to questioning you.

The Witness: All right. I have answered the question then that I think we have operated within the limits assigned to the State Board and Department.

[I-170] * * *

Q I show you Plaintiffs' Exhibit 136, which is a letter addressed to you. Can you tell me the date of the letter?
A September 28.

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The Court: What year, please?

Mr. Lucas: September 28, 1966. This was a letter, sir, from Mr. George H. Moody, Superintendent, Henrico County Schools.

The Witness: Yes, sir.

By Mr. Lucas:

Q Do you know Miss Carolyn Davis? A Carolyn Davis?

Q U. S. Office of Education? A The name is familiar. I think she was with the U. S. Office, may still be.

Q In charge of compliance for two years, wasn't [I-171] she, for the State of Virginia? A I don't recall.

Q I read you this letter, sir.

"Dear Mr. Elmore. This morning I had a long-distance telephone call conversation with Miss Carolyn Davis of the U. S. Office of Education. In this conversation she wanted to review our faculty desegregation, at which time she wants us to do some transferring of teachers, which I positively refused to do. I thought you would want to know this information."

This is September 28, 1966. Did you take any steps as a result of this conversation or this letter from the Superintendent of Henrico County to facilitate compliance with the Office of Education's request in this matter? A Let me refer you again to the communication from the U. S. Commission of Education.

Q Answer my question, sir. Did you take any action? A I did not take action because the compliance under Title VI, the effectuation of a desegregation plan resides with the local school board. We come in upon request.

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[I-174] * * *

Cross Examination

By Mr. Broaddus:

Q Mr. Elmore, starting in 1964 with the passage of the Civil Rights Act, would you describe the activity of the State Board of Education and what it did after that act was passed and in compliance with that act? A Yes. The Civil Rights Act was passed July 2, 1964. The State Superintendent and I attended several briefings in Washington with the U. S. Commissioner of Education at his office and his staff. Several more briefings in Charlottesville, and up until the late fall. On January 6, 1965, materials relating to Title VI of the Civil Rights Act were mailed to all Division Superintendents [I-175] in Virginia. Following that meetings were held, regional meetings in February. February 4 regional meetings for the purpose of discussing the materials that were mailed to the Division Superintendents.

Q Let me interrupt you for a moment, sir. The material which you have referred to was disseminated with Superintendent's Memo Number 4561, dated January 6, 1965? A That is correct.

Q And includes the Title 45 of the Code of Federal Regulations Assurance of Compliance Form 441 explanation of HEW Form 441, and instructions to the school districts? A That is correct. Yes, sir.

Do you want me to proceed?

Q Please, sir. A Following these regional meetings which were held throughout the state and attended by all

Division Superintendents, the Superintendent of Public Instruction held a conference with his advisory council, which is composed of a chairman of nine regions in the state to go over in more detail the compliance requirements. These superintendents in turn would meet with the superintendents in their regions and carry back informative materials.

In January the State Board authorized the [I-176] Superintendent of Public Instruction to execute the statement of compliance with HEW.

This statement of compliance was completed.

I might say that it was an eight-page document prepared by HEW in which was set forth the programs that would be covered.

The activities of the agency, the state department and compliance within the department, its staff and so forth.

An agreement that the state department would, and I think I used the word "consult," inform and advise local school boards, superintendents upon—concerning their responsibilities to comply with the Civil Rights Act.

Q Let me interrupt you just for a moment. A copy of this is styled "Statement of Compliance with the Department of Health, Education and Welfare Regulations Under Title VI of the Civil Rights Act, 1964," is that the way it begins? A Right.

Q A copy of this has been included in the folder. Go ahead, please, Mr. Elmore. In the spring of 1965. [I-177] A All right. In the spring of 1965, in April, four additional regional conferences were held with Division Superintendents. In attendance were consultants from HEW, including Edward A. Murns, Assistant Dean from the University of Virginia Law School, and then consultant with HEW.

The purpose of these meetings was to distribute recen materials distributed by the U. S. Department of Educatio concerning more specific guidelines.

In June, '65, a formal release was sent to Division Super intendents advising them of assistance that could be secure from consultants assigned to the department. Also July 1 Division Superintendents were advised of services and fund available under the technical assistance program.

Q Let me go back a moment if I may, Mr. Elmore. ask you if in April of '65 you distributed under Superin tendent's Memo Number 4618, dated April 22, 1965, guide lines for southern school desegregation?

Which was prepared by G. W. Foster, Sr., Professor o Law and consultant to the U. S. Office of Education, Uni versity of Wisconsin. A Yes, sir, that is correct. Yes mailed under Superintendent's Memo Number—

Q Excuse me just a moment, sir. [I-178] A Yes

Q My copy has page two stapled to the top.

Judge, I don't know whether that is true in all of then or not.

Then the Superintendent's Memo where page two shoul have been.

Do you have that document, sir?

The Court: Yes.

By Mr. Broaddus:

Q I ask you to return to page four of the guideline In order to save your voice I will read this for you and as you if that is what it does say.

"Under assignment based on freedom of choice. Desegre gation plans based on freedom of choice are perhaps n more than transitional devices that ultimately will give wa

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to unitary zoning. In theory freedom of choice is unobjectionable. The practical difficulty is that choice open to many may not in fact be free and school authorities who are considering freedom of choice plans have a special responsibility to assure themselves before they adopt them that the plans can be carried out in good faith, particularly is this true where ingrain community custom is likely to result in economic reprisal or threats to parents and children," and on page five at the bottom, "In short freedom of choice [I-179] plans are probably no more than a transitional device. Districts, in view of this, should give serious thought either to going directly to unitary systems of zoning or introducing unitary zoning at lower grade levels from the beginning expecting to move the unitary zoning upward to replace the freedom of choice first installed at higher grade levels."

Is that an accurate reading, sir? A Correct. Yes, sir.

Q And was this document disseminated to all superintendents, Divisional Superintendents? A Yes.

Q Was it disseminated approximately seven months prior to the letter which was referred to in Dr. Wilkerson's testimony addressed to him from William Battle? A What was the date of Battle's letter?

Q November of '65. A This went out approximately six or seven months before his letter and therefore we saw no need for sending his letter to Division Superintendents. We had already known of the transitional direction that was being taken on freedom of choice, and in our meetings and individual conferences with superintendents, they were well [I-180] aware. Many of them received letters from HEW.

Q Thank you, sir.

Now, excuse me for interrupting, but if you would go back to approximately July of '65. A In July, '65, Division Superintendents were advised of services and funds available through the technical assistance program under Title IV.

In the memo their attention is called to the fact that they had three sources of information and assistance in their desegregation plans. And it is also included in the policies of HEW that were sent out to school divisions. They had opportunity for funds and technical assistance through Title IV of the Civil Rights Act. They also had available the services of the technical assistance programs at the universities. And the one in Virginia at that time was the technical assistance program that the University of Virginia at Charlottesville, and then the policies and guidelines of HEW also brought attention to the fact that assistance could be secured from State Departments of Education.

Q Was in fact the center at the University of Virginia performing substantially the same functions which Dr. Green now performs in your office? A Well, it is a counterpart. They are structured [I-181] pretty much alike. Our staff has not been built up yet to the point that we hope it will be shortly, but I think the region three office of HEW looks upon the state department technical assistance program as more the official program since it is officially well related with the Department of Education. So the school divisions were advised of assistance which was in keeping with our compliance agreement.

July 23rd of '65 we held three full days of conferences with Division Superintendents in House committee rooms at the Capitol. Three days at which time approximately 45

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Division Superintendents were invited who were having difficulties with their desegregation plans.

We had in attendance at those meetings HEW consultants, David N. Barus, a Deputy Director, then Director, Equal Educational Opportunities program.

So I think in reviewing it up to this point it is chronological. It is purely a random sampling of what the department has done, but I think it is quite evident from this that the department was taking an active role, and not necessarily a low-key role.

I would say that roughly 75 percent of my time was devoted to the civil rights program, and much of the work of the State Superintendent's Office and mine had to be done at night and on week ends. It was a busy time. I would say [I-182] that the department occupied a very prominent role, call it low key if you want, but I think we have had a very successful program.

In March, '66, the department—

Q Excuse me for interrupting you just a moment, Mr. Elmore. A Yes, sir.

Q In the fall of '65 did you compile documents showing which localities were in compliance either through court orders or through filing compliance under one or 441 or 441-B? A Yes, we did.

Q A copy of this has been previously introduced as one of our exhibits, if it please the Court. I don't recall the exact number.

Now, there were several divisions which were not in compliance at that time, did you continue to work with those locales? A Yes. We continued to work with all localities, not only those who were having exceptional difficulty, but we continued to work with those that had sub-

mitted an acceptable desegregation plan but needed assistance in their dismantling process, and we discussed them.

[I-183] Q If you will continue, sir, I believe you were at March, '66. A March 10, '66, the department again scheduled regional meetings with Division Superintendents at which time the U. S. Office of Education consultants explained the new guidelines for Title VI compliance for school desegregation '66-'67. Periodically, and properly so, HEW updated its compliance requirements in keeping with the experiences of preceding years. One of our responsibilities was to keep them informed and updated on that.

A formal release was sent to Division Superintendents April 29, '66, advising them that summer programs must be in operation in compliance with the revised desegregation plans as a part of the year round program.

September, 1966, this was the matter I mentioned earlier. Division Superintendents were requested to supply the department with copies of all letters and documents sent to and received from the U. S. Office of Education in order that the department could be kept informed and be in a position to advise with localities on problems when requested.

In telephone conversations with HEW in [I-184] Washington I continually stressed this point because I had found that often localities received letters from H W without indicating copies to our office. They made every reasonable effort to see that the communication line did not break down.

Q Approximately around this time was a plan of desegregation which was designed by HEW as a prototype disseminated to all localities from your office? A Yes. That is right.

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Q All right, sir. If you will continue. A There were some Federal Court decisions at about this time that we felt would have impact on localities. Under date of May 17, '68, we sent out a Superintendent's Memo calling attention to recent Federal Court decisions placing affirmative obligations upon local school officials to eliminate dual school systems through the location and construction of schools. This was a directive to the localities.

Those are just a random sampling of what the department has been doing through the years. This report actually covers a period from July 4, 1964, until July 1, 1970, at which time we established the technical assistance program and brought in Dr. Robert Green.

Q I think that was 1971, was it not? [I-185] A '71, correct. We started working on it in '70.

Of course, as a part of this random sampling of the activities of the department we made a complete survey of all school divisions to determine the extent of desegregation and compared that of '70-'71, fall of '70-'71 with that of '69-'70. The significant outcome of that data study, without elaborating on the detail, was simply that, and I will just call attention to one part of it, the significant fact is that during the period there had been a state-wide increase of 75,384 black children attending desegregated schools in 1970-'71 over 1969-'70, or an increase in a one-year period of 50.1 percent.

Q Well, sir, in July 2 of 1970 Mr. Leonard of the Justice Department sent a letter to Dr. Wilkerson. You are aware of that letter, are you not, previously been introduced into evidence? A Yes, I am.

Q Sir, did Dr. Wilkerson reply to that letter on July 8, 1970? A He replied to the letter. "I should say that the

letter is to notify you that the Attorney General has received such complaints from four of these school divisions." Dr. Wilkerson replied under date of July 8 in [I-186] effect saying that we shall proceed to work with school officials of the Town of Cape Charles, Northampton County, the Cities of Chesapeake and Newport News and Suffolk. It is hoped that within a reasonable period of time we will be in the position to advise that these school divisions have committed themselves to full desegregation by the beginning of 1970-'71 school year.

Q Did that letter also request that Mr. Leonard advise you of the complaints which had been filed with the Attorney General? A In the letter Dr. Wilkerson stated, "It is noted that the Attorney General of the United States has received complaints from parents to the effect that their children are being deprived of equal protections of the laws on account of race and in connection with the operation of public schools. It would be most helpful to us in our conference with the local school officials if you would advise us as to the conditions of unlawful segregation and racial discrimination in each of the referenced school systems concerning which complaints have been received and judged to be meritorious." You will note we didn't ask for names. That, of course, is out of the realm of operation. But we felt if we could be advised as to the nature of the complaints, whether it was in school lunch, extracurricular [I-187] activities, or whatnot, we could pinpoint. But we never got a response to that and maybe, possibly, properly so, maybe we should make a complete investigation of this. We followed through on it.

Q Well, sir, did you in fact work with these localities to enable them to come into compliance? A Yes, I did, very closely.

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Q Would you describe, taking, for example Newport News, or some other locality that was named, what you did? A All right. Let me use an example. I doubt if I will be able to go through all four, but this is the process that I followed in working with all four of these school divisions.

Let's take Suffolk. We indicated that we would follow up immediately. I had a conference with Mr. William R. Savage, Jr., Division Superintendent, Suffolk City Schools, on July 10, 1970, which is just a few days after the letter.

Suffolk operated under a zoning plan for desegregation of its school system during '69-'70. Federal funds were terminated on February 9, 1970, due to the fact that the Booker T. Washington School was zoned to include an all-black student body in grades one [I-188] through nine.

After a discussion of the alternative solutions to effect the natural desegregation and removal of all vestiges of a dual system the department reached certain conclusions and in fact made a specific suggestion, confirmed in letter to Mr. Savage dated July 13.

If I might turn to that letter.

"Dear Mr. Savage: Following our conference on Friday, July 10 very careful thought has been given to the data which you submitted to your geographic zoning plan for desegregation of the Suffolk Public Schools. It would appear that the area of attendance at the Booker T. Washington School was drawn to constitute an all-black enrollment, which is in violation of subpart C, item 12-B of the Policies on Elementary and Secondary School Compliance of Title VI of the Civil Rights Act, 1964, Department of HEW Office of Civil Rights as follows: 'A dual structure can be eliminated by zoning all students to schools on the basis of a single set of geographic attendance zones. School

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systems are responsible for assuring that to the extent it is administratively feasible the zone boundaries do not perpetuate any vestiges of a dual school structure and that among the various attendance zone arrangements which, if possible, [I-189] it establishes one that best promotes elimination of its dual school structure, further the establishment of the Booker T. Washington School to contain grades one through nine would result in an enrollment of approximately 300 pupils whereas it has a capacity of substantially over 500.

This type of organization also results in excess enrollment at the H. A. Brown School.

"In order to correct a zoning plan that results in a totally black school and to effect a more evenly balanced enrollment it would appear logical to convert Booker T. Washington to a junior high school containing grades six, seven and eight to serve the entire school division. In addition Booker T. Washington has adequate junior high school facilities including shop, laboratory, home economics department, library, cafeteria, gymnasium, and auditorium which adds to the desirability of this conversion.

"In view of the above statements it is suggested that your board give consideration to the establishment of Booker T. Washington as a junior high school including grades six, seven, eight, beginning with the 1970-'71 school session. Among notification of affirmative action we shall be in the position to advise [I-190] Mr. Jerris Leonard, Assistant Attorney General, Civil Rights Division, and Mr. Lloyd R. Henderson, Education Branch Chief, Office for Civil Rights, that your board has committed itself to full desegregation as of the beginning of the fall term of 1970."

I would like to read a shorter letter to Mr. Jerris Leonard dated August 11. "Dear Mr. Leonard: The Suffolk City

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School Board took official action on August 6 to convert the Booker T. Washington to a junior high school serving all pupils in grades seven, eight for the entire city. Copy of letter enclosed from Mr. W. R. Savage, Jr., Division Superintendent of the Suffolk City Schools, conveying this information to Mr. Lloyd R. Henderson. Also enclosed is a copy of the minutes of the board meeting.

"In keeping with your letter of July 2nd to Dr. Wilkerson I am pleased to advise that the Suffolk City School System will be fully desegregated as of the beginning of the fall term of 1970. This has been accomplished by action of the board converting the formerly all-black Booker T. Washington School to an integrated junior high school serving all the pupils in grades seven and eight.

"In light of the positive action of the Suffolk City School Board it is recommended that this school [I-191] division be declared in full compliance with Title VI of the Civil Rights Act and the regulations of HEW and Suffolk is now in compliance."

Your Honor, I don't think I can read much more because of my voice.

Mr. Broaddus: Would you like to take a recess?

The Court: Would you like a break?

The Witness: No. If I could just have a drink.

The Court: I will tell you what we can do. We can take a little recess and you point out to Mr. Broaddus anything that you think is pertinent and if it is admissible he will be able to read it if you would like to do that.

The Witness: Suppose I proceed, Your Honor. I won't read every letter, if it is just agreeable, if I could just give the substance.

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The Court: We will take a break any time you want, or quit for the day any time you want.

Mr. Lucas: We have no objection to the admission of the letters.

The Court: Why don't you put them in? I will look at them anyway.

Mr. Broaddus: They are not in the folder.

[I-192] The Court: I have been wondering for almost two weeks now why everybody was reading paragraph three in the letter. I am a good reader. I really wasn't wondering, I knew some of the purposes.

Mr. Broaddus: Perhaps I can shorten it somewhat.

The Court: All right.

By Mr. Broaddus:

Q Mr. Elmore, included in the folder is a letter dated July 15, 1970, which you wrote to Leonard concerning the Newport News schools and contains a chronology of events related to the desegregation of the Newport News schools and a summary of our discussions. Attached to that is a chronology of the events beginning in January 30, 1968, continuing through July 13 of 1970.

Was this a fairly accurate summary of the types of activities which your office has conducted with all school divisions? A With all school divisions that have either requested assistance or that we have been requested to work with, such as the office of Mr. Jerris Leonard. Not all of them.

The Court: Can you make that part of State Exhibit 9?

[I-193] Mr. Broaddus: That is in there, sir.

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The Court: And any others that you wish.

Mr. Broaddus: We will include the other documents also.

The Court: All right, sir.

By Mr. Broaddus:

Q Now, Mr. Elmore, throughout this time from—until Dr. Green was obtained under his program, which was testified to yesterday, did you continue to spend a large amount of your time in this activity? A Not as much. As I said school divisions had disestablished the dual school system to the extent which was satisfactory, but they were under desegregation plans approved. No, not as much. We were, I guess you would say, to some degree phasing out this first responsibility, not phasing out completely, but it was not in as high momentum and taking the full force of my time.

Q This was when the second phase began to be conceived of? A We recognized at this time that the second phase of the desegregation program would be a difficult one requiring a staff. Under this earlier phase it was possible to work with Division Superintendents. In this continued phase we would have to work with not only Division [I-194] Superintendents but principals, supervisors, teachers. So we knew that if desegregation was to work we had to integrate the desegregated systems, which means a change in attitude on the part of teachers and pupils. A change in attitudes on the part of administrators and supervisors.

A new competence in working with children in mixed classes. Of meeting new problems that come out of it too without having confrontations. So we then moved into this technical assistance program.

As I said, it was timely. Then when we started preparing the technical assistance proposal it was accepted by, and we started looking for staff. We interviewed possibly a dozen very capable men and women, selected Dr. Robert H. Green, who is extremely competent.

He served at the University of Virginia instructional staff and worked through the technical assistance program of the University of Virginia. In fact that is where I discovered him.

Q Does Dr. Green make his monthly reports to HEW of the activities which he is engaged in? A That is a requirement that every Director or Special Assistant, as we call Dr. Green, he is a member of the Central Office and they must make those reports, yes.

Q I show you a document now dated May 17, 1971, [I-195] addressed to Mr. E. A. Cooper from Robert T. Green. Subject: Monthly Report of Activities, April 1 through 30, 1971, and ask you could you briefly look at that and advise me of whether you have previously read it? A Yes. I received as well as the State Superintendent copies of each monthly report which we look over. I don't read it in detail, but I know exactly what it is. There are conferences with teachers, principals, workshop institutes.

Q Are the contents of this report fairly indicative and contain an accurate reflection of the activities carried on and conducted by Dr. Green? A That is correct. The last one is for July.

Q Now, did you recently, or did Dr. Green recently compile a summary of the status of compliance of the various localities with HEW? A Are you referring to the—yes.

Q What was the latest compilation which you have

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made, sir, the date of it? A Well, this is April 15, 1971. The latest compilation of the compliance status.

Q Does that show everyone was in compliance with the exception of, I believe, one or two, which divisions [I-196] were in litigation at that time? A That is right. Yes, sir. Newport News, and now Newport News, we are in receipt of a telegram that Newport News is now in compliance under an acceptable court-ordered compliance.

[I-200] * * *

The Court: Mr. Elmore, you may not be recalled to the stand, so let me see if I can get something straight in my own mind. Everybody has directed their questions to you in connection with the 1964 act, Civil Rights Act, as distinguished from the law, which has been effective since 1954.

The Witness: Right.

The Court: You were a superintendent, a [I-201] Division Superintendent for, did I hear you say, 17 years?

The Witness: 17 years, yes, sir.

The Court: So you have been connected with the State Department of Education?

The Witness: Since 1960.

The Court: Well, directly, but prior to that as the superintendent, a Division Superintendent, you certainly had contact?

The Witness: Correct.

The Court: Well, in your experience as a superintendent since your direct association with the state department, were there any efforts, affirmative efforts made on the part

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of the State Board, to attempt or to suggest to the respective school divisions methods of eradicating the vestiges of the dual school system as distinguished from the complying with HEW requirements as contained in the act which, in fairness, has a connotation of a monetary incentive. I mean, isn't that really why the State Board was involved in it, so that the divisions could get the federal money?

The Witness: Correct. Yes, sir.

The Court: Well now, can you recall any affirmative action taken by the Board where they didn't have anything to do with the money, just because the law [I-202] said you had to wipe out the vestiges, and in fairness what has prompted the question is in looking at Exhibit 9, I would hope there are others you will put in there, Mr. Broaddus, that may be of some help, I see that on May 10, 1968, there was a memorandum sent to the Division Superintendent having to do with a Fifth Circuit Court of Appeals. In May, 1968, that is a very, very special month and time with judges because we were getting really straight on freedom of choice at that time because any memorandum sent out on that, for example, on the New Kent decision, Green, to the various school divisions, if so the thought occurs to me I might not have had 42 lawsuits. Were there any sent out?

The Witness: I am trying to remember, Your Honor. I was superintendent from 1943 to 1960, which covers that period. We received a communication from the United States Superintendent of Public Instruction advising us of the decision.

The Court: Excuse me.
Yes, Mr. Broaddus?

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Mr. Broaddus: I think he has got '58 in mind, sir, rather than '68 and that might be wrong.

The Court: Go ahead, sir.

The Witness: I thought you were directing [I-203] your question to prior to. Following it?

The Court: I made it too long. I was talking about New Kent decision. But I want you to tell me what affirmative action that you can think of that the Board took either while you were Division Superintendent or since you have been with them directly to assist the respective school divisions to comply with the law as interpreted by the United States Supreme Court as an example as distinguished from just HEW, which is money.

The Witness: I don't recall the dates of the court decisions, but it would be during that period, Your Honor.

The Court: Well, we will take Brown in '54 when we knew we had to do something starting then.

The Witness: Well, we got a communication from the State Superintendent on that advising us.

The Court: Then when the U. S. Supreme Court acted in Green and New Kent, freedom of choice.

The Witness: What was the date?

The Court: 1968, May 27, I believe. And the reason I think of it is I see you did talk about the Fifth Circuit Court of Appeals, at least a memorandum went out on that having to do with the Civil Rights Act.

The Witness: Well, Your Honor, these are [I-204] random samplings, just a random sampling of our distribution. Now, I don't recall whether we sent anything out.

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The Court: Would you look for me some time in th next few days and see if you can find anything that in effe says to a school division, look into this, or the law ma require this, or anything at all? If so I would like to have

The Witness: What case now?

The Court: I was talking about Green v. New Kent. don't care what it is. I want to know if there are an memorandums that went out to the respective school div sions having to do with complying with constitutional r quirements as distinguished from doing something so yo can get money.

The Witness: Right.

The Court: If you do that I would appreciate it.

The Witness: I shall check, Your Honor.

The Court: All right.

Gentlemen, did the Court's questions prompt any othe I will let you ask any.

All right. Thank you very much, Mr. Elmore. You hav been most patient.

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MOTION TO AMEND

Filed August 26, 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

[Title Omitted in Printing]

Defendant, School Board of the City of Richmond, moves the Court for leave to amend its Answer to the Amended Complaint and Cross-Claim herein to conform to the evidence heretofore introduced at the trial of this cause over or without objection, as follows:

I. Answer To Amended Complaint

1. Defendant School Board adopts and realleges paragraphs 1 through 14, inclusive, of its Answer to the Amended Complaint filed in this Court on January 15, 1971, as paragraphs 1 through 14, inclusive, of this Answer, with the same force and effect as though they were set out in their entirety herein.

II. Amended Cross-Claim

1. Defendant School Board adopts and realleges paragraph 1 of its Cross-Claim filed in this Court on January 15, 1971, as paragraph 1 of this Amended Cross-Claim, with the same force and effect as though it were set out in its entirety herein.

2. All children attending the Richmond Public Schools have a constitutional right under the Equal Protection Clause of the 14th Amendment to equality of educational

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bined system; and to supervise pursuant to the directions of this Court all material aspects of the operation of said system.

The School Board of the City
of Richmond, Virginia

By /s/ George B. Little
Of Counsel

George B. Little
Browder, Russell, Little and Morris
1510 Ross Building
Richmond, Virginia 23219

Conard B. Mattox, Jr.
City Attorney
402 City Hall
Richmond, Virginia 23219

[Certificate of Service Omitted in Printing]

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[K-4] * * *

PROCEEDINGS

(August 31, 1971) (Tuesday at 10:00)

The Clerk: 3353-R. Carolyn Bradley, et al., versus the School Board of the City of Richmond, Virginia, et al.

Case continued from Friday.

[K-11] * * *

MARTIN E. SLOANE

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lucas:

Q State your full name and occupation, please, sir. A Martin E. Sloane. I am Acting Deputy [K-12] Staff Director of the United States Commission on Civil Rights in Washington, D. C.

Q Mr. Sloane, your vita has previously been filed with the Court. For the purpose of understanding your testimony, would you start and give us your employment history? A Yes.

Beginning in November, 1958, I was employed at the Office of the Comptroller of the Currency as Assistant Counsel. The Office of the Comptroller of the Currency is the agency responsible for supervising national banks.

In February, 1961, I joined the staff of the United States Commission on Civil Rights as first, as attorney, advisor, and later as the Chief of the Housing Section of the Commission on Civil Rights.

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Q Let me go back just a moment. Give us your academic background. A Yes. I have a BA degree from New York University, a Master of Arts Degree in English Literature from the University of Michigan, and a Law Degree from Columbia University in New York.

Q Thank you.

[K-13] You went with the Commission what date, sir? A February, 1961.

Q Would you tell us what your duties were with the Office of the Comptroller of the Currency? A Yes. Well, it was a very small legal staff. We had the wide variety of legal problems that national banks have to deal with at that office including a variety of problems concerning negotiable instruments, dealing with mortgage loan problems that national banks would have. Lots of problems concerning corporation organizations and these problems would come up on a regular basis, especially when banks would have their annual meetings. It was, as I said, a small legal staff and each of us were generalists and had to deal with a wide variety of problems that did come up.

Q You said, sir, that you worked on the Commission's report on housing in 1961? A That's right. That was my principal responsibility for drafting the Commission's housing report in 1961 and dealing very largely with the impact of federal housing policy on the problem of housing discrimination.

Q That report of that time consisted of [K-14] five volumes and your responsibility was for the housing? A That's right.

Q Can you explain to the Court please, sir, the structure and functioning operation of the Commission on Civil

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Rights and its techniques and procedures as it operated in the past and as it is operated today? A Yes. The Commission is almost entirely a fact finding agency. We have no enforcement powers. No power to provide remedies for individual grievances. Rather, our statutory mandate is to find facts, report them to Congress and to the President, with recommendations for legislative or executive action.

The scope of our mandate is dealing with facts concerning denials of equal protections of the laws, both at the state and local levels; and also for appraising federal laws and federal policies relating to equal protections of the laws.

We also have a charge by statute with performing a clearing house function. Providing information on civil rights on a nationwide basis. In carrying out our fact-finding function, we rely very extensively on public hearings, both in Washington, D. C., having to do with federal policy, federal practice, and [K-15] also in cities and metropolitan areas throughout the country.

We also rely on interviews with concerned and knowledgeable people throughout the country as well as in Washington, D. C. with federal officials.

On the basis of our investigations, hearings, interviews, also formal letters of inquiry, we prepare our reports concerning facts that we found and recommendations for action to correct inequality or inequities that we have found to exist.

Q The Commission was established in 1957. Was it a temporary agency at that time? A Yes. It was. In fact, it still is. We were originally created with a two-year life, scheduled to go out in 1959 following issuance of the report. The report was issued but Congress extended the Commission for an additional two years. Congress has seen fit to

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extend the Commission until this day. We are currently scheduled to go out of existence in January, 1973, so we still are a temporary agency.

Q Does the Commission have state advisory committees, and if so, what are their functions? A Yes, we do. We have advisory committees in each of the 50 states, plus the District of Columbia. [K-16] These advisory committees consist of people knowledgeable concerning civil rights on the state and local level who work for the Commission on a voluntary basis. They are not officially connected with the Commission, but rather, are serving functions. They do factfinding on their own, unlike the Commission, when they hold hearings they have no subpoena power. These are exploratory hearings and on the basis of their own investigation they issue reports to the Commission. These do not represent Commission reports per se but rather provide information to the Commission which the Commission can use as it sees fit.

Q Following the issuance of a report in 1961, did you have other employment, sir? A Yes, in July of 1962 I left the Commission and joined the staff of the Housing and Home Finance Agency, which was the predecessor to the Department of Housing and Urban Development. I was employed in the Office of the Administrator. The Administrator at that time was Robert C. Weaver, and my specific responsibility was to work on civil rights on problems of housing discrimination in his office.

Q What was your major responsibility upon entry into that agency? [K-17] A Well, for the first three or four months I was there I was heavily engaged in working on materials concerning the issuance of the executive order on equal opportunity and housing which was in fact issued

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by President Kennedy on November 20, 1962. Working on drafting of the executive order itself and preparing background materials concerning legal authority and policy consideration relating to the executive order. Following issuance of the executive order, my responsibility was to help coordinate the activities of the various constituent agencies of the Housing and Home Finance Agency to see to it that they carried out the directive of the order to prevent housing discrimination to the fullest extent.

Q Would you give me the function and title of the constituent agencies? A Yes.

There were five at the time. There were five constituent agencies which had varying legal relationships to the Office of the Housing and Home Finance Administration.

There were three independent agencies over which the Administrator had coordinating responsibility but did not have the authority to direct their [K-18] activities.

These were the Federal Housing Administration, which operates mortgage insurance programs. The then Public Housing Administration, which had responsibility for administering the low-rent housing program. The Federal National Mortgage Association, which operated secondary market responsibilities. For those three agencies, the Administrator had authority only to coordinate their activity.

There were two additional constituent agencies over which he had directive authority. These were the Urban Renewal Administration, which administered the slum clearings and urban renewal program. The Community Facilities Administration, which administered a variety of community development programs such as water and sewer grants, open space, planning programs, and the like.

Q Now, after you left the Housing Agency, where did

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you go, sir? A In April of 1966, I returned to the United States Commission on Civil Rights as Special Assistant to the Staff Director.

Q Did you have other experience with the agency, itself, with respect to the legislative branch, [K-19] the Office of General Counsel, in the legislative branch? A Of the Housing Home Finance Agency.

Q Was that in the agency, itself? A Yes, I did. And during the last year that I was at the Housing and Home Finance Agency, I transferred to the General Counsel's office to the legislative branch, and had responsibility for working on drafting of certain substantive housing programs which were submitted to Congress, particularly the 1965 Housing and Urban Development Act, which the main feature of which was the rent supplement program.

Q And you returned to the Commission in 1966 in what capacity? A As Special Assistant to the Staff Director. My responsibility for the first eight or nine months that I was there was to work on the Commission's study of Racial Isolation in the Public Schools.

In addition to having general responsibility for the success or that project, I had specific responsibility for those sections of the study and report dealing with housing, and particularly federal housing policy as it relates to housing discrimination and its impact on school segregation.

[K-20] Q And after that report was issued, what was your function with the Commission? A Primarily the Commission's Congressional liaison officer. In that capacity, I was responsible for preparing testimony for the Commission on a variety of bills, both those dealing with civil rights specifically and those dealing with substantive

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problems with clear civil rights implications, such as housing legislation, welfare legislation, educational legislation, poverty legislation.

Q And since 1969, what has been your principal occupation? A In June, 1969, I was appointed Assistant Staff Director in charge of the Office of Civil Rights Program and Policy. This is the principal research arm of the Commission consisting of professional employees with a wide variety of experience. Both lawyers, economists, political scientists, psychologists, social scientists, and responsibility of our office is to deal with substantive areas that have civil rights implications. We carry out most of the Commission's responsibility to issue reports with recommendations.

We issue reports on housing, on education, on welfare.

[K-21] Q Have you prepared any reports recently as part of your function with the Commission? A Yes. Over the last two years since I have been in the capacity as Assistant Staff Director, we have issued a number of reports. We issued one entitled "Federal Installation and Equal Housing Opportunity." This was in 1970, having to do with the impacts of the location of federal installations and the economic benefits that they frequently generate on opening up housing opportunities for lower income employees and for minority group employees of any income.

We have just recently issued another housing report dealing with Section 235 "Program of Home Ownership for Lower Income Families" in which we examine the operation of this program nationwide, and in looking intensively at the way it has been operating in our four metropolitan areas across the country.

In October of 1970, we issued a voluminous report

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evaluating the civil rights enforcement effort of more than 40 federal departments and agencies having significant civil right responsibilities including four or five agencies such as the Department of Housing and Urban Development, having key civil rights responsibilities [K-22] in the area of housing.

Last May we issued a report following up on the October, 1970 report to see what had happened, what agencies had done to carry out the recommendations that the Commission had made to see how responsive they had been to the findings we had made concerning inadequacy of the federal civil rights enforcement efforts.

Q Have you written publications in scholarly journals in matters covering federal housing programs? A Yes, I have. I have written several articles in law journals concerning various legal aspects of the problem of housing discrimination with particular reference to the way the agencies have responded to the directive contained in the executive order on equal opportunity and housing.

I have also written some articles for journals that were not legally oriented concerning other aspects of the housing—

Q Have you lectured, sir, in the field of housing? A Yes, I have. I have lectured in law schools. I have also made a number of speeches on the subject of housing to various groups which we thought would be interested and were in a position to take some [K-23] action to implement what the Commission had recommended.

Q Have you presented testimony in the past, sir, with respect to federal housing programs, to legislative bodies? A Yes. To the extent over the past few years, the Commission has been very heavily engaged in the legislative

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process concerning housing programs. We have prepared—we have presented testimony before several Congressional committees concerning this subject, and in each case I was responsible for drafting the testimony. In addition, I have presented testimony myself on behalf of the Commission concerning other aspects of the federal civil rights enforcement effort.

Mr. Lucas: At this time I would like to tender Mr. Sloane as an expert with respect to relationship between housing—school segregation and federal programs and policies.

The Court: Gentlemen, do you wish to examine on the voir dire?

Mr. Gravatt: No, sir.

The Court: Mr. McIlwaine?

Mr. McIlwaine: No.

The Court: Mr. Lacy?

Mr. Lacy: No.

[K-24] The Court: Mr. Byrne?

Mr. Byrne: No.

The Court: Mr. Gray?

Mr. Gray: No questions, Your Honor.

The Court: All right. He is qualified.
Excuse me, Mr. Little.

Mr. Little: No, sir.

By Mr. Lucas:

Q Would you describe, sir, the history of the Federal

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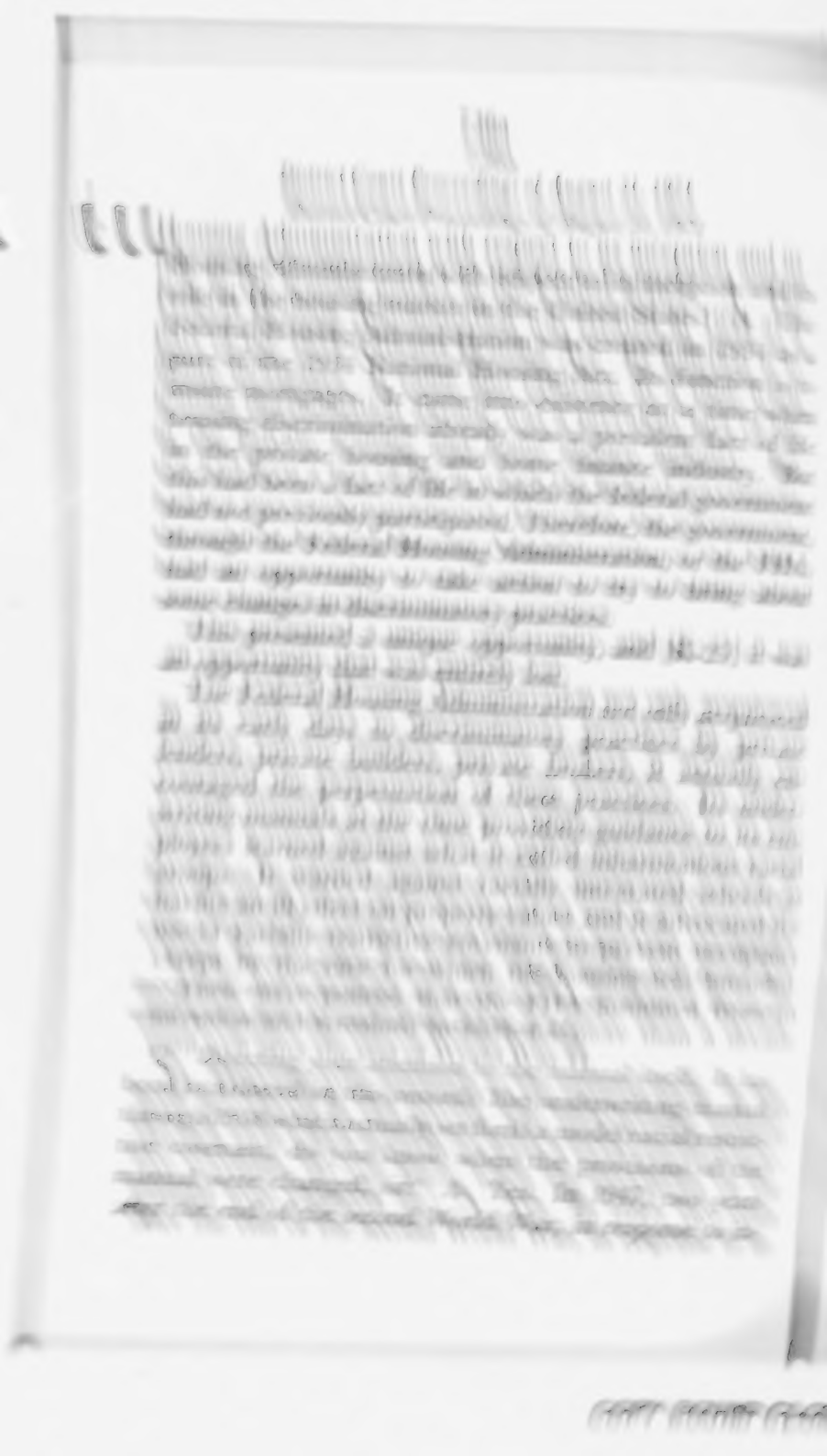

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will agree to purchase that loan so that the lending institutions will not be stuck with a long-term asset such as a mortgage loan for 20 or 30 years. The policy of FNMA has been one of neutrality as the agency has pointed out to my Commission. It doesn't get involved until after the loan has been made, but discriminatory policies on the part of builders or lenders is perfectly acceptable to FNMA during certainly the first decade or so of its existence.

Q In other words, sir, in order for them to refinance or take the loan it had to have met the FHA requirements so that had built in those requirements? A That is true.

Q Do you have an opinion, sir, with respect to the other financial agencies such as FDIC in terms [K-31] of the housing practices? A Yes. FHA and VA operate government underwriting programs. Most of the nation's housing certainly today is conventionally financed with loans which are not insured by FHA or guaranteed by the Veterans Administration.

These loans are made by private lending institutions, but they are very heavily regulated and supervised by one or more of four federal agencies. And these agencies, which my Commission looked at as early as 1961, have traditionally had an attitude which at best can be characterized as one of neutrality. That is, if a lending institution, which they benefit, regulate and supervise, chose to discriminate in mortgage lending on the basis of race, this has traditionally been perfectly acceptable to the agencies.

I might go beyond that. That was at best, in fact, in response to questions which our Commission put to each of these federal agencies as to whether they thought it would be appropriate for a lending institution to take into account the race of a would-be borrower, the racial composition of

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the neighborhood into which he wished to move, in determining whether or not to make a mortgage loan; the agencies each said not only would it be appropriate, in many [K-32] instances it would be obligatory on the part of these lending institutions.

Since the enactment of the 1968 Civil Rights Act which contains VIII, federal housing law, discrimination by mortgage lenders, whether they are using FHA or VA loans or conventional financing, has been a violation of federal law. The agencies to this day have tended to maintain an attitude of neutrality and done virtually nothing to implement the provisions of Title VIII.

Q With respect to the decision in United States Supreme Court in Shelley versus Kraemer on the question of racial covenants, how long a period of time elapsed before the Federal Housing Administration changed its requirements? A Well, the decision in Shelley versus Kraemer issued in May, 1948, and it wasn't until late 1949 that FHA and VA issued a ruling that they would refuse to insure or guaranty loans on property carrying racially restrictive covenants filed of record after February 15, 1950. Therefore, it was a period of nearly two years before the two agencies acted on the Supreme Court's decision.

Q Did the agencies continue to insure [K-33] loans on property having such covenants that would develop subsequent to 1950 but whose covenants had been filed before February 15, 1950? A That is correct.

Q Did the Commission in 1959 make any evaluation of the percentage of housing funded or assisted by FHA guaranties that was occupied by black families? A Yes, we did.

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In connection with hearings that we held we found that it was two percent or less of all the housing that had been provided with FHA mortgage insurance from the close of World War II until that time had been occupied by black families.

The Court: I am sorry. What was the year?

The Witness: 1959. From the close of World War II until 1959.

By Mr. Lucas:

Q Directing your attention to November, 1962, what took place with respect to these federal programs and policies? A In November, 1962, President Kennedy issued an executive order on equal opportunity and [K-34] housing which directed all federal departments and agencies having functions relating to housing and urban development to carry out their programs to prevent discrimination in the operation of their programs. The order applied mainly to the Federal Housing and its mortgage insurance programs, the Veterans Administration and its loan guaranty programs. There was one major exception which was the financial regulatory agencies which supervised the great majority of lending institutions that made conventional loans. These were excluded from coverage under the executive order.

Q The executive order applied to public housing? A Yes, it did.

Q And what had been the practice from the period, say, 1948 up until 1962, in public housing?

Let me rephrase that.

Had there been a change in policy in 1948 and 1949 in regard to the Public Housing Administration? A No,

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there had not been the Public Housing Administration or the public housing program. That was established in 1937. The policy of the federal agency that had administered the program was somewhat different [K-35] from FHA. From the beginning it insisted on racial equity. That is, it insisted that minority families receive their fair share of public housing. But it did not insist that that fair share be received in a non-segregated basis. This policy continued from 1937 when the program was established, well beyond 1948. Well, beyond 1954. Was established as official policy until 1962. That is a local public housing authority as far as the federal agency was concerned, was free to assign tenants to public housing projects on a racially exclusive basis.

Q Did the Commission address itself to this problem prior to 1962? A Yes, we did. Our Commission's report in 1959 dealt with the public housing program. Our report in 1962 dealt with the public housing program.

In fact, we wrote to the Public Housing Administration and asked them how they could justify permitting local housing authorities to assign tenants on the basis of race to maintain racially segregated policy by legal compulsion in view of the number of Court decisions which clearly indicated that such assignments were unconstitutional. Their response was that they agreed it was unconstitutional but they were not prepared to do [K-36] anything about it. It was not until the President specifically directed all agencies, including the Public Housing Administration, to prevent discrimination, that any change was made in their policy.

Q Was the Commission's reference in the letter to the agency referenced to Brown versus Board of Education? A Yes.

Q You stated that the Commission had evaluated the effectiveness of the executive order and the subsequent enactment in 1968 of the Fair Housing Law. Can you tell me what the result of the evaluation was?

If you will, describe a little bit of the methodology of determining what the practice had been. A Our concern during this, in October, 1970, report, I referred to earlier, entitled Federal Civil Rights Enforcement Effort, was to determine how well federal agencies had geared themselves in terms of mechanism and structure to carry out their significant civil rights responsibilities.

The Commission over the years had received a number of complaints, literally hundreds and sometimes thousands of complaints. Also on the basis of our own investigation and hearings. It was quite clear that [K-37] these laws, including housing laws, were not working as well as people had hoped.

We were trying to find out what was wrong with the way federal agencies and departments had set themselves up to carry out these laws. One of the major areas of concern was housing. One of the departments and agencies that were principally concerned with it was the Department of Housing and Urban Development which has principal responsibility for enforcing the federal fair housing law.

What we learned was that the Department had adopted almost totally passive posture in terms of carrying out civil rights responsibilities. It was relying almost entirely on the receipt of complaints and then processing complaints. That was the principal vehicle that it chose to use to carry out its civil rights responsibility.

What we found, in short, was that the zeal with which this agency and its constituent agency had carried out policies of discrimination in earlier years was not being

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matched by a similar enthusiasm in carrying out its newly created fair housing activities. There was almost a total lack, I would not say almost, [K-38] there was a total lack of affirmative program attitude on the part of the agency.

There was a passive posture when a complaint was received. It would process the complaint. But that was about the limit of what it saw as its responsibility to carry our fair housing responsibilities.

Q Can you tell us, sir, about the public housing policy with respect to tenants after 1962, and in turn relate it to the site selection practices at that time and any subsequent developments? A In terms of the tenant selection. Following issuance of the executive order the then-Public Housing Administration changed its policy which was one of permitting assignment of tenants on a racially segregated basis to one of encouraging a freedom of choice type of plan.

It did not, for its first few years, insist that tenants actually must be assigned on a non-segregated basis. Following enactment of the Civil Rights Act of 1964, however, this case has one under Title VI, which prohibits discrimination in federally assisted programs, the Public Housing Administration allowed freedom of choice plan, finding that they had [K-39] not been effective and insisted on a form of first-come-first-serve tenant selection plan which remains in force now.

Q There is a plan known as the A plan and a plan known as the B plan. One is a first come assignment, and if you reject it you go to the end of the line, is that correct? A That is correct. And plan B would be three choices. Three cracks at the apple.

Q This doesn't mean you are given three choices simultaneously, it means you have three opportunities to fill a

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vacancy and you may reject without stating a reason, is that right? A That's right. Yes.

Q Is that policy still generally enforced? A It is my understanding it still is.

Q Would you tell us what the site selection policies were as of the date of the executive order, and then what happened after that period? A As of the day of the executive order, site selection was a matter which was left almost entirely to the decision of the local housing authority as public housing—

Q I am sorry. Excuse me.

[K-40] In terms of the policy of tenant assignment, which was that of racial segregation, what effect did that policy in connection with the site selection have on housing patterns, in your opinion? A Well, the program has been in existence for 34 years. It has produced something over 800,000 housing units. It has been, in my opinion, a very important factor in developing and hardening patterns of residential segregation in metropolitan areas.

Q After 1962, what changes, if any, were made in the site selection policy? A In 1967, the Public Housing Administration changed its policy to one of insisting on a balanced site selection policy for local public housing authorities. That is, for every unit the policy ran as follows: For every unit of public housing in a white area, there also, or in a black area, there also had to be a unit of public housing in a white area. The idea was to newly open up opportunities for housing in areas outside those of existing minority concentrations.

Q And what developments have there been in recent days in terms of the policy which was adopted? A Well,

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currently the Department of Housing and Urban Development has pending a proposed regulation [K-41] which will provide for uniform site selection criteria applicable to all lower income housing programs. That is not only the public housing program, but also the rent supplement program, the Section 236 program of rental housing for lower income families, and in one sentence these proposed site selection criteria would represent a retreat from the existing policy with respect to the public housing program in that the site selection criteria no longer would be a flat requirement which must be satisfied if the applicant is to receive federal funds, but rather are instead criteria—they represent only priorities. This would be applicable to public housing as well. That is, the policy has been stated as follows: All other things being equal, if the site would serve to open up housing opportunities outside areas of existing minority concentrations and that proposal would be accepted. But this is far different from a flat requirement, that is a sine qua non, that is either this requirement is satisfied or your application will be rejected, which was the case, has been the case under the existing criteria applicable to the public housing program.

I said these criteria have been proposed. They are still pending, as far as I know.

[K-42] Our Commission has commented extensively on these criteria offering suggestions for revision.

Q In July, '71, the Commission transmitted its recommendations with respect to the project-by-project approach with reference to metropolitan areas and the question of housing segregation. Can you describe briefly what the Commission's position was in the problems that it foresaw in eradicating racial segregation patterns? A We believe that the criteria was based on a project-by-project approach

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in metropolitan area is doomed to failure if we are talking in terms of open housing opportunities for all families, minority as well as majority, throughout the metropolitan area. We believe the only way that any racial sense can be made of residential patterns in metropolitan areas is if the agency charged with administering programs of housing assistance develops plans based on a metropolitan-wide approach to the problems of housing, in relation to where jobs are, where schools are, where demographic patterns are, and where residential patterns exist.

Currently, the Department of Housing and Urban Development, and under the proposed criteria, is using a project-by-project approach which we don't [K-43] think is going to be workable.

Q Mr. Sloane, you mentioned the Federal Home Loan Bank Board. What role does it have as a federal agency in the financing of home mortgage market? A The Federal Home Loan Bank Board regulates and benefits most of the nation's savings and loan associations. Savings and loan associations are perhaps the most important source of residential finance that we have in this country.

Q Do you have any figures approximately what percent home financing is done by these agencies? A The last figure I saw was roughly 40 percent of all home financing is done by savings and loan associations.

Q Has your agency had occasion to make recommendations to that agency with respect to policies which might help eliminate the pattern of racial segregation in housing? A Yes. As early as 1961, we urged that agency to adopt policies and procedures which would insure against discrimination by the savings and loan associations under their supervision.

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Q Can you describe for us the federal rent supplement program, and if you will, sir, will you do so [K-44] in terms of the people that were supposed to benefit, whether or not it is the income level or whether they were people displaced by various other programs. Can you describe the criteria? A The rent supplement program is a low-income housing program very much analogous in terms of the people that are to be benefited to the public housing program. That is, the income limits for eligibility to rent supplements are, as I understand it, identical to those for public housing. But the main distinction is that while public housing is by and large a governmental program in which it is operated by a local housing authority, which is a state agency, the rent supplement program is largely a private enterprise program in which private sponsors own the rental housing, private builders build it, private lending institutions finance it. The federal assistance comes in the form of assistance payments on behalf of low income families which enable them to live in housing which otherwise they would not be able to afford. The families are required to pay 25 percent of their income toward the rent and the federal government would pay the rest.

Q Is the program designed to assist people who are displaced by programs such as the highway program, [K-45] the interstate highway program? A Yes. One of the criteria for eligibility requirements for eligibility is that a family must be displaced by governmental action. There are other criteria by which a family can be eligible, but this is one. If a family is displaced by governmental action and its income limits are within the statutory requirements, then it is eligible.

Q This would include urban renewal as well? A Yes, it would.

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Q Does that program require certain authorization before it may be operated in particular localities? A Yes, it does. The statute itself under which the program operates is silent on this point, but each year since the program was established, Congress, in each of the appropriation bills, has added language which requires, for the program to operate in any community, the community must have a workable program for community improvement, which is a requirement that has been traditionally associated with the urban renewal program but not associated with any housing program, or in the absence of a workable program, there must be local government approval for operations of the program.

Q Are you familiar with any investigations [K-46] of the effects of this particular provision in the appropriation bills in terms of availability of housing to poor people, and particularly black people in suburban communities? A The Commission examined this over the years since the program was established. What we found was that the program had been limited almost entirely, to the extent it operated in metropolitan areas at all, limited almost entirely to operations in the central cities. Central cities generally have workable programs. Suburban communities generally do not.

In fact, on the basis of our inquiry of the urban renewal program, it was estimated that some 75 percent of suburban jurisdictions do not maintain workable programs. Nearly all central cities do.

Q What is the result in terms of development or impact of federal housing subsidies in terms of the racial concentration in the cities? A This program has had the effect of tending to concentrate the poor, and a disproportionately

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large number of black poor, to central cities, and has impeded access to suburban parts of the metropolitan areas.

Q Has the Commission done any study on the [K-47] location of industry or relocation of governmental units in suburban areas as they affect housing opportunities for black people and employment opportunity? A Yes, we have. And in 1970 we issued a report entitled Federal Installation and Equal Housing Opportunity in which we examined in detail the experience with respect to two government installations and also this was in conjunction with examining the policies of the General Services Administration which is responsible for determining where, and acquiring space for, most government agencies.

One installation that we examined was the National Bureau of Standards which, back in the mid-'60's moved from its original location in Washington, D. C. out to Gaithersburg, Maryland, which is some 20 miles out into the suburbs of Maryland. What we found was that despite an overall increase in employment in two years following the move of the National Bureau of Standards, there was an absolute decline of minority employment at the National Bureau of Standards.

Now, the basis of our investigation, we found there were several very clear reasons why it had declined.

For one thing, lower income housing was [K-48] almost unavailable in Montgomery County, which is one of the most affluent counties in the nation, and probably the most affluent county in the State of Maryland.

In addition, and most minority employees of the National Bureau of Standards, were concentrated very heavily at the lower grade levels and were in need of low income housing if they were to move near their site of employment, if they would move there at all.

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Secondly, there were a substantial number of black employees that were employed at the professional level earning good salaries. These employees were reluctant to move to Gaithersburg, Maryland at the time. At the time the State of Maryland had no fair housing law. Gaithersburg had no fair housing law. There were practices of discrimination. It was their understanding that practices of discrimination were rampant. They also felt they were unwelcome.

We did a number of interviews with black professional employees who had not moved out to Gaithersburg and for a time were trying to make the long and rather arduous trip from the District of Columbia and found that they simply could not go where they felt that they were not welcome and where there was no law to protect their rights.

[K-49] Q In that connection, sir, what is your opinion of the effect of the build-up in urban areas of surrounding patterns of suburbs, subdivisions, which either have racially restrictive covenants or otherwise affected by patterns of housing discrimination on the choice of housing by someone coming into the community and finding an existing pattern? A I think it has a very substantial influence.

The problem has been—problems of residential segregation are built up. They become much more difficult to reverse than if you were starting from scratch with something resembling a tabula rasa where people by designation know where they are supposed to live. It takes someone rather extraordinary to deviate from the pattern which already has been established. And this is a pattern which has been established with some substantial federal support, and in my view, the federal government substantially is responsible for establishing this pattern and has even a greater responsibility to take the action necessary to disestablish it.

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Q In Racial Isolation in the Public Schools the Commission, in reporting the situation, at that time [K-50] discussed the effect of housing patterns in terms of schools and made certain evaluations with respect to what point the remedy should be produced. In that connection, sir, with your knowledge and experience in the field of housing in the United States, and your awareness of the scope of the problem, assuming full federal enforcement of existing laws, assuming the current faculty situation with regard to residential patterns, how long would it take before there would be a substantial change in this pattern?

You may condition your answer in any way. A Well, first it has been something nearly ten years since we have had some federal laws and at preventing housing discrimination. There have been laws. As the Commission pointed out, these laws have not been enforced very effectively at all.

In those ten years, the situation regarding housing segregation has actually got worse, as a factual matter, despite the laws.

There are very few signs right now that indicate that federal agencies having housing responsibility are prepared to gear up and enforce the laws with full vigor.

Even if they were to do so, even if they [K-51] were to undertake the most innovative and imaginative enforcement programs of enforcing the laws, it would take, I estimate, several generations before we could hope to see the kind of change in residential patterns that would indicate a distribution by race of people that would suggest that choice has been the real factor determining where they live.

For example, in the metropolitan area of Washington, D. C., where I come from the racial composition of the metropolitan area has not changed by more than one percentage point in the last 60 years. It has always been

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roughly 75 percent white, 25 percent black, whereas in 1910 each of the jurisdictions in the metropolitan area, both the District of Columbia and Maryland and Virginia suburbs, were roughly 75 percent white and 25 percent black. Today we have the anomalous situation where the District of Columbia is more than 70 percent black and less than 30 percent white. Montgomery County, Maryland, is perhaps 95 percent white and five percent black. Arlington, Virginia or Alexandria is about 95 percent white and five percent black.

I suggest, when I said that to get a situation which would seem to reflect the choice of people rather than racial designations, I would—what [K-52] I am saying is that I would want to see each of these jurisdictions roughly the same percentage as the make-up of the metropolitan area. But to get that, we have to take into account certain rather harsh realities.

We do already, with a housing, national housing inventory of roughly 70 million units, almost all of which are already occupied. So we have to rely there on just turnover. We can't chase everyone out of his house and say we are going to start all over again.

Q Are there any figures or estimates on the turnover in residential housing? I realize this is a pretty broad question, but are there any generalized figures indicating turnover rates? A The one suggested to me has to do with single-family housing and families on the average moving every seven years. That is the only thing I have heard about it. I couldn't really give you a good estimate.

Q What about new housing starts? A Now, at an annual rate of 1½ million housing starts a year, which is considerably less than the goal that Congress has set forth,

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but even if we meet that goal, it would amount to something slightly in excess of two million units a year. And just through [K-53] these statistics you can see how long it would take, even given forceful enforcement, forceful effective enforcement by federal agencies with existing fair housing laws. How long it would take before the problem of housing segregation could possibly be eliminated—

Q This factor that you spoke of of the affect of the pre-existing condition, would that further impede the process despite the fact of vigorous enforcement? A I would think so, because in addition to the fact that we are dealing largely with a turnover of 70 million units, we have the existing patterns there, and it takes more than just enforcement of a civil rights law for these patterns to be eliminated.

Q Sir, I have here a study, Federal Policy and Equal Housing Opportunity, dated June 8th, 1971. Did you author that study, sir? A Yes. I prepared that study in connection with a Commission hearing in Washington, D. C. in June.

Q Would you examine this?

We have marked it as Plaintiffs' Exhibit 137.

Did you bring that study with you today or yesterday evening when you came? [K-54] A Yes.

Q It has not previously been made available to us? A No.

Q For what hearing was that prepared? A The Commission has been conducting a series of hearings on the problem of suburban access of minority families to jobs and housing. The series of hearings culminated in June, 1971, with hearings in Washington, D. C., in which we called, among others, federal officials having key responsi-

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bilities for programs relating to this problem. Among the witnesses we called were Secretary of Housing and Urban Development, George Romney, Attorney General John Mitchell, and Secretary of Transportation, John Volpe. This paper was prepared for that hearing and submitted for the record at that hearing.

Q Are you familiar, sir, with the President's report to Congress pursuant to federal statute of the conditions of housing segregation in the United States in 1971? A I am sorry. Which report?

Q The President's report to Congress pursuant to the National Housing Act of the conditions of [K-55] housing in terms of residential segregation? A The statement of the President on June 11, 1971, I believe that is the date. I don't think that was in response to a directive of Congress, though.

Q The oral statement? A I want to make sure I am talking about the same one.

Q All right.

[K-56] * * *

Cross Examination

By Mr. Gravatt:

Q Mr. Sloane, if I have understood your testimony correctly, you have stated that the chief factor in encouraging the containment of low income people in concentrated areas in the central city has been or have been the policies of federal housing agencies, is that a correct statement? A It is hard to agree with it. It is too general. I would say that federal housing policies, [K-57] policies of federal agencies, have been a very formidable factor in

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the confinement in development of patterns of housing which reflect confinement of minority families, whether affluent or disadvantaged.

Q And this has gone on since 1936, did I understand you to say? A From the inception of the Federal Housing Administration, sir, which is 1934.

Q '34.

Up until when? A Well, the federal policy of actively encouraging racial segregation and racial discrimination in housing continued—began in '34 and continued until at least 1947 when there was a slight change in language used in the FHA underwriting manual. I would more accurately put the change at 1950 when FHA declared that it would refuse to insure mortgages on property carrying racial restrictive covenants filed of record after February 15 of that year.

Q All right, sir.

You have further evidence, as I have understood your statement, that the present policy of these lending agencies has been more one of neutrality than of aggressive and affirmative enforcement of the law. [K-58] A The official policy is one of actively preventing discrimination. These agencies are now charged by federal law, by a variety of federal laws, with carrying out that responsibility.

What I have said is the way in which they have carried out that responsibility is a posture of neutrality, of lack of aggressiveness, of passivity, but there is no question that they are officially and by law charged with the responsibility of being advocates of fair housing and no longer discrimination in housing.

Q I believe you also stated that assuming full federal enforcement to the existing laws, it would take a very long

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time to change the patterns in housing that have been established? A That is correct.

Q I believe you stated that you have—that these laws have been in force for a period of ten years? A Some of—

Q Yes. And that you have seen no material changes in that period of time? A That is correct.

Q And that in your judgment, even if these laws were fully enforced, that it would take generations to reverse the pattern that has been fixed? [K-59] A That is right, to fully reverse the patterns.

Q You have described the racial ratio within the District of Columbia, and I believe you said that it was 75 or 70—30? A Black to white.

Q Black to white.

And in Arlington County, five percent black and approximately 95 percent white. And in the adjacent counties of Maryland, five percent black and the approximately 95 percent white.

Do you, in your studies of this problem, have you given any attention to what the public school systems might be able to do to change what the federal government has done through its lending agencies? A The public school systems I don't think can do very much about housing patterns. But they can do a good deal with school attendance patterns. Housing patterns have a direct impact upon school attendance patterns only when a certain type of school attendance procedure is used, such as geographic attendance.

Q Would you recommend and advocate that the school systems in Washington and in the adjacent suburban areas

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take on the task of undertaking to undo what [K-60] has been the policy of federal lending agencies?

* * *

The Witness: My answer is, yes. That is, we have, as I said, a metropolitan area of Washington, metropolitan area, where the racial composition has not varied by more than one percentage point in more than 60 years. I would think that with the cooperation among the various jurisdictions of the Washington metropolitan area, the Maryland-Virginia suburbs, as well as the District of Columbia, we would have schools that would reflect racial integration.

Q You would recommend it on a cooperative basis? A I would recommend that the schools in the metropolitan-wide basis in the Washington area be desegregated. If possible, on a cooperative basis.

Q You were asked something about your familiarity with the President's report to Congress on housing. Were you able to identify that report? A During the recess I did. I have not examined that report.

[K-61] Q You have not? A No, I haven't.

Q Are you acquainted with any report or statement that the President has made on the subject of transporting children by busses in schools?
A Yes, I am.

Mr. Lucas: I think that is irrelevant.

The Court: Well, it is. It really is.

Mr. Gravatt: I agree, Judge. He said he was familiar with it and that is all I wanted him to say.

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The Court: All right, sir.

Mr. McIlwaine, do you have any cross examination?

Cross Examination

By Mr. McIlwaine:

Q Mr. Sloane, I wonder if you would enlighten me a little bit more about some of these agencies that you have mentioned. You mentioned FHA. Is that the Federal Housing Administration? A That's right.

Q Is that the oldest of the various agencies that you have mentioned during the course of your testimony? [K-62] A The Federal Home Loan Bank Board, which I mentioned, is two years earlier. That was created in 1932 as part of the Federal Home Loan Bank Act. But the major involvement of the federal government in housing through the underwriting of the loans, was through the National Housing Act of 1934, which established the Federal Housing Administration.

Q And is there a Public Housing Administration? A There is, but its name has been changed. It originally began as the United States Housing Authority. It was then called the Federal Public Housing Authority. Then it was changed to the Public Housing Administration and then to the Housing Assistance Administration. I believe it has gone through one more change, but I am not familiar with the name it has now.

Q And its function is what, sir? A To administer at the federal level the low-rent housing program.

Q And is there a federal National Mortgage Administration? A Association.

Q Association? A Yes, there is.

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[K-63] Q And its function? A Is to primarily to provide a secondary market for FHA insured and VA guaranteed mortgage loans.

Q And is there another agency that has to do with urban renewal? A There is. Its name has been changed, too. It used to be called the Urban Renewal Administration, but its name has been changed since the enactment, or since the Department of Housing and Urban Development was created. They have reorganized and the name was changed, I think it is called the Renewal Assistance Administration now.

Q And then there was one which had the name, Facilities? A Community Facilities Administration. That is an agency that has been abolished and the functions taken over by other units of the Department of Housing and Urban Development.

Q Now, is the Housing and Urban Development is it, as we know it today, separate from the Urban Renewal Agency you just mentioned? A No. The various agencies that you have mentioned are part of the Department or constituent units of the Department of Housing and Urban Development [K-64] and all the authority that these agencies used to exercise independently are now vested in the Secretary of Housing and Urban Development.

Q I see.

Are there any other agencies in this field that I have overlooked? A Well, there are other agencies that have functions relating to housing and urban development, but I think those are the principal ones.

Q These are the major? A Yes. Within the Department of Housing and Urban Development.

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Q Now, did I understand you to say that all of these agencies are now operating under a federal policy of insuring or attempting to insure fair housing? A That's right.

Q And that they are charged by law with actively preventing segregation in residential areas and housing? A That's right. Title VIII of the 1968 Civil Rights Act, which is a federal fair housing law, contains one provision which specifically directs all departments and agencies, and particularly the Department of Housing and Urban Development, to carry out [K-65] their programs and activities relating to housing and urban development in a manner to further the purposes, affirmatively to further the purposes, of fair housing. It is a specific Congressional directive to HUD and all other departments and agencies with departments in this field.

Q To your knowledge, have these agencies that you have mentioned adjusted their policies in compliance with this Congressional directive? A They have not done so adequately. There have been a few very tentative steps that have characterized their changes. For the final regulatory agencies, I spoke of earlier, the Federal Home Loan Bank Board, for example, has recognized that the lending institutions they supervised are now prohibited from discrimination. They have sent them notices calling their attention to the fact that there is a federal fair housing law and that there is a provision prohibiting discrimination in mortgage lending.

We have urged these agencies to implement that provision prohibiting discrimination by building in a procedure in the examination process. And the examination process is the principal way in which these agencies have monetary compliance with a variety of laws [K-66] by

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the lending institutions they supervise to build in procedures in the examination process that would assure against discrimination. So the examiners could detect patterns of discrimination by mortgage lending institutions. These agencies have refused to do so.

The federal fair housing law was enacted in April of '68. It has been in effect for more than three years. They still have refused to build any procedures into their examination process.

Q And this one that you are talking about right now is the one that supervises the savings and loan? A Savings and loan associations. Also commercial and mutual savings banks which are heavily engaged in mortgage lending.

Q Now, it is your recommendation that they build in this technique? A That's right.

Q That would be more effective? A It is a traditional way in which these agencies enforce any law. There is no reason that we can see, that I can see, why an exception should be made in enforcing the federal fair housing law.

Q Would something of this nature also be [K-67] applicable or indicated for the other agencies that you have mentioned? A Yes, the other three.

Q The other? A Financial, regulatory.

Q Yes. A Yes. The same principle would apply.

Q Have you made a recommendation that these agencies, other agencies, undertake these techniques? A Yes.

Q Which would further implement? A Yes, we have.

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Q And better implement the law of Title VIII? A That's right.

Q Of the Civil Rights Act? A Yes, we have. We did, in this report I mentioned earlier, quote the federal civil rights enforcement effort. This was issued in October, 1970. We made that recommendation in May of 1971. We followed up to see what agencies had done in implementing our recommendation. None had taken any action.

Q Is the Commission having a further follow-up study? [K-68] A Yes, we are.

Q Since May of 1971? A Yes, we are.
Right now we are beginning preparation for a follow-up study which will be entitled One Year Later which we plan to issue later this year.

Q One Year Later referring to October, 1970, the report you did? A Yes.

Q And in all these you are doing two things, am I correct? You are, in the first place, assessing what has been done and making recommendations to what could better be done? A That's right.

Q Thank you, sir.

The Court: Mr. Lacy?

Mr. Lacy: No questions.

The Court: Mr. Byrne?

Mr. Byrne: No. I defer to Mr. Gray, Judge.

The Court: Everybody seems to.
All right, Mr. Gray.

Mr. Gray: First off, I wonder if, Your Honor, we could

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request permission to copy or get copies [K-69] of that that was just filed?

The Court: Yes.

Mr. Gray: 21 pages, Your Honor.

The Court: Do you have another copy? We will have a copy made right now.

Mr. Gray: I do not need this copy. I would like a copy.

The Court: All right.

Mr. Marshal, would you take it to the Clerk's office and, you better get ten.

Mr. Gray: We don't need that many, Your Honor.

The Court: Half a dozen?

Mr. Gray: That will be fine.

The Court: All right.

[K-69] * * *

Cross Examination

By Mr. Gray:

Q Mr. Sloane, after the Civil Rights Act of 1961 was passed and the advisory committees were appointed, did not most of the states file reports, advisory committee reports, on the various areas covered by the Civil Rights Act? A The Civil Rights Act, after 1957, created the Commission on Civil Rights. Yes, advisory committees [K-70] were formed.

Q Are you familiar with the reports from a number of the states which indicated that the choice of the individual and his preference to remain with his own ethnic group played a very great role in the continuing patterns of

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segregation? A I am not. I am not familiar with those reports. Which reports are you referring to?

Q Well, like the one from the State of Washington, one from the State of Colorado, one from the State of Massachusetts, a whole list. You haven't read those reports? A I have read some state advisory committee reports, but they have been issuing reports over many years and there are a good number of states and advisory reports.

Q You are not familiar with any reports from any of the states that indicate it is the individual's choice in many instances of black people to remain with their own ethnic group that helps to continue the segregated pattern? A I am not familiar with them.

All right, sir.

Q Is there any requirement with respect to [K-71] public housing that it be in the proximity of a school? A I believe that one of the considerations taken into account in approving a low-rent public housing project is accessibility of schools concerned with whether they are adequate school facilities.

Q Has nothing to do with the— A I am not sure whether it is a question of proximity. It is my understanding when an application is made among the items which must be included is information demonstrating to the federal public housing agency that schools that will serve children in the proposed project will be adequate for the task.

Q Any requirement with respect to availability of transportation? A I am not sure, Mr. Gray.

Q Well, do you know of any other of the criteria—you told us there was a criterion that the people had to be dis-

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placed because of some governmental activity, that that was one of the criteria? A Well, that was one of the criteria of eligibility for the rent supplement program.

Q Yes, sir. A I thought you were talking about the public housing program.

[K-72] Q Well, I thought I was, too, but you switched me to rent. So I thought I would talk about rent with you. A Okay.

Q In either of the programs, let's go back, in either of the programs, is there a requirement as to the proximity of the schools? A I don't believe that there is a requirement on proximity.

Q In either of the programs, is there a requirement with respect to availability of transportation? A I am not sure on that, Mr. Gray.

Q You do not know?

All right.

In the rent subsidy program, there is a requirement that he has to have been displaced because of some governmental project? A That is one of the conditions under which a family whose income meets the statutory requirements can be eligible.

Q Fine. What I have not understood, Mr. Sloane, is whether that is one of the things which will make him eligible or whether that is required? [K-73] A No. Let me explain.

A flat—income limits are flat requirements.

Q Yes, sir. A If you earn over a certain amount, you are ineligible, but beyond that it is in order to be eligible

you must be a family displaced by governmental action, elderly, handicapped, or be living in substandard housing. Those are the principal other criteria.

Q Yes, sir.

Now, you indicated that with respect to the movement of the Bureau of Standards that there was some difficulty maintaining, or that there was a loss of minority employees and with respect to the low income employees, this took place because there was no low-rent or low-cost housing nearby? A Well, that combined with inadequate transportation from the District of Columbia out to the new site.

Q Well, you mean inadequate transportation? You mean no public transportation or inadequate public transportation? A That's right. Inadequate public transportation.

[K-74] Q Do I take it, then, sir, that you are saying that with respect to low-income people proximity to the job is an important factor in their housing? A In housing choice.

Q Yes, sir. A I would say very definitely.

Q And that the availability of public transportation is an important factor in their housing choice? A I would think access to the place of employment is a very important factor.

Q Thank you very much.

No further questions.

The Court: Any redirect?

Mr. Lucas: No, sir.

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The Court: All right.
Did Mr. Gray's questions prompt any other?
All right.
Thank you, Mr. Sloane. You may be excused, sir.
Help the witness down.
(The witness stood aside.)

The Court: Call your next witness, please.

[K-75] Mr. Lucas: Mr. Estes.

The Court: Excuse me, Mr. Lucas.

GERALD W. ESTES

was called as a witness, and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lucas:

Q State your full name and occupation. A Gerald W. Estes, Vice President, Business Manager, Richmond Newspapers.

Q Mr. Estes, have you brought with you pursuant to subpoena certain documents from the files of the newspaper? A Yes, I have.

Q Would you identify the documents, please, sir? A Letter from Alan Donnahoe dated December 3, 1965.

Q Addressed to who? A Addressed to Mr. Richard A. Graham, Commissioner, Equal Employment Opportunities Commission, Washington, D. C.

Q Is there another document in connection with that letter to Mr. Graham? [K-76] A Yes. A letter from Mr. Graham to the publisher, Richmond Times Dispatch.

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Q What is the date of that letter? A November 22, 1965.

* * *

[K-77] A Yes. I have a letter to Mr. David Tennant Bryan, Chairman and Publisher, Richmond Times Dispatch dated March 6, 1970.

Q Who is that signed by? A Frank E. Schwelb.

Q Chief of the Housing Section? A Yes.

Q A letter from the Department of Justice?

Would you read that letter, please, sir. A "I am writing to you concerning compliance of the Richmond Times Dispatch and the Richmond News Leader, with the fair housing provisions of Title VIII of the Civil Rights Act of 1968.

"We have received complaints from several Richmond residents concerning the arrangement of the 'Houses for Sale' classified advertisements in the Times Dispatch and the News Leader.

"As you know, your newspapers, for purposes of listing 'Houses for Sale' classified advertisements, divide Richmond into six zones, with the houses generally being listed under the heading for the zone in which they are located. However, at the beginning of the 'Houses for Sale' section, before the heading listing houses for sale by zone, there is a [K-78] separate column there where certain houses are listed without regard to the zone in which they are located. Until 1968, many of the advertisements in this separate 'Houses for Sale' column stated that the houses advertised were for 'Colored.' In 1968, the newspapers ceased to publish advertisements using the indication 'Colored,' but the separate column at the beginning of the 'Houses for Sale'

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section has been retained. Our investigation has revealed that the separate column at the beginning of the 'Houses for Sale' section is still commonly understood among both black and white persons in Richmond as indicating houses for Negroes.

"Under these circumstances, we believe that the continued maintenance of this 'Houses for Sale' column contributes to racial discrimination in housing, contrary to Title VIII of the Civil Rights Act of 1968; and specifically it violates Section—

Q You may skip over the quote from the law and read the next paragraph, if you will, sir. A "This Department, as well as other federal agencies, is charged with enforcing Title VIII, and the Attorney General is empowered to institute suit in federal Court to obtain appropriate relief. It is our policy, however, to attempt to achieve voluntary [K-79] compliance with federal law amicably and without litigation, when that can be accomplished promptly.

"Under the law, you have an obligation not only to stop all discriminatory practices in the future, but also to correct the effects of past discrimination. While there is no one special way in which this has to be done in all cases, we think the following steps would be appropriate in view of the facts here.

"One, discontinuing the separate column at the beginning 'Houses for Sale' section where certain advertisements for houses for sale under the heading for the appropriate zone.

"Two, publishing, in each issue of both newspapers on the page or one of the pages where houses for sale classified advertisements are listed, some phrase to the effect that

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racial discrimination in the sale or rental of all property is prohibited by federal law."

Q Let me interrupt you. Is this letter addressed to both papers, the Times Dispatch and the News Leader, is that correct? A That is correct.

[K-80] Q Thank you.

Would you read the next paragraph? A "As we have indicated, the steps proposed in this letter are not necessarily the only way in which the purposes of the law can be accomplished, and we would be happy to discuss with you any alternative suggestions which you may have.

"I would—

Q You may skip the last paragraph. It is signed by Jerris Leonard, Assistant Attorney General, Civil Rights Division by Frank E. Schwelb, Chief, Housing Section? A That is correct.

Q The date of the letter again? A March 6, 1970.

Q Directing your attention to the next item, sir, that you produced. Is this a letter dated March 30, 1970? A Yes.

Q Is it addressed to Joanne E. Clifford, Housing Section, Civil Rights Division, United States Department of Justice? A Yes.

Q Would you read that letter, please? [K-81] A "Dear Miss Clifford:

"Following our telephone conversation of March 17, I again considered the 'House for Sale' advertising of Richmond Newspapers and still cannot agree that the elimination of this general listing column is called for.

"Reiterating the essentials of my review of the advertising, I find

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"One, the heading bears no suggestion of preference, limitation or discrimination;

"Two, the advertisements carried under the heading indicate no preference, limitation or discrimination;

"Three, a home buyer using the newspapers would need some sort of code to understand the ads to be discriminatory.

"I recognize, however, that most of the advertisements now placed in the general listing are houses in Negro sections, although the listing is not made available for discriminary purposes."

Q Does it say "discriminatory?" A "Discriminatory purposes."

Q Is the word "Negro" capitalized in that paragraph? [K-82] A No, it is not.

Q Would you read on, please. A "From the time the newspaper first started its zone classification, on October 1, 1963, this general listing has always been available for advertisers who did not want their houses classified by zone.

"At that time, of course, it was legal and customary to designate the 'Colored' housing; so the selection of this general listing has nothing to do with racial considerations.

"To illustrate this, I attach a photo print of a section of the classified columns in 1964, about six months after the change to zoning, in which a number of houses were advertised under the general listing heading.

"In an effort to cooperate, I suggest that for a period of three months the following cut line be inserted immediately above the 'Houses for Sale (134)' listing:

"Federal law contains prohibitions against discrimination in the sale of houses.

"This, it would seem to me, advises all readers of the

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existence of rights and remedies which [K-83] they might pursue if discriminated against, at the same time allowing the newspapers to retain a perfectly innocuous column heading.

"With kind regards, very truly yours, Alexander Wellford."

Q Does it show copies to officials of the paper, sir? A Copies to Mr. D. Tennant Bryan and Alan S. Donnahoe.

Q Is there a subsequent letter dated January 15, 1971? A There is.

Q And this is to Mr. Jerris Leonard, Assistant Attorney General, Civil Rights Division? A Yes.

Q Would you read that letter, sir? A "As we pointed out in our letter of March 30, 1970 to Miss Joanne E. Clifford of your division, to which letter we have not as yet received a reply, Richmond Newspapers first started its zone classification for houses for sale on October 1, 1963 to improve its service to advertisers and to interested buyers. This arrangement, of course, had nothing to do with discriminatory practices.

[K-84] "The fact that the listing now complained of, 'Houses for Sale (134)', allegedly has been misused by some advertisers is unfortunate, since unquestionably many advertisers use the heading for perfectly proper purposes. Richmond Newspapers has never intended the classification to represent a discriminatory listing, nor has it regarded the listing as discriminatory. However, to avoid an unpleasant and expensive law suit, Richmond Newspapers will discontinue the heading 'Houses for Sale (134)' as of February 1, 1971.

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"Very truly yours, H. A. Brent." With copies to the newspaper personnel.

Q And was that discontinued at that time, sir? A Yes, it was.

Q All right, sir.

Is there a publication on a regular basis in the paper of any statement with respect to the recommendations contained in paragraph number two of the letter from the Department of Justice dated March 6, 1970? A Which paragraph? I am sorry.

Q Paragraph two on the last page? A On the last page?

[K-85] Q Under "Recommendations?" A No.

Q That is the one that called for regular publication with respect to federal law prohibits racial discrimination in the sale of property? A That's right.

Q Do you know that many other newspapers in the country regularly publish such statements in their classified pages— A I don't know.

Q —with respect to housing? A I don't know.

Q What is the circulation of the Richmond Newspapers, sir? A 144,000 morning, 120,000 evening, 200,000 on Sunday, approximately.

Q What is your area of service, generally? A The morning paper, 36 counties and the City of Richmond.

Q Would that include Henrico and Chesterfield? A Yes, it does.

Q News Leader provides merely Richmond, Henrico, and Chesterfield, and Hanover.

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[K-85-a] Q And the Sunday morning? A Statewide.

* * *

Mr. Lucas: Your Honor, I have here Plaintiffs' Exhibit 41 which was offered at the previous hearing containing the statement of policies of the [K-86] newspapers. I would like to show it to the witness and ask him—

* * *

Mr. Lucas: The Court will recall this was a matter that counsel, Mr. Wellford represented that if the witnesses were called, they would so testify.

* * *

Mr. Lucas: Yes, sir. I think I will [K-87] read it to the witness and ask if it comports with his recollection of the practices of the paper at that time.

By Mr. Lucas:

Q With respect to racial designations in the classified headings of the Times Dispatch and the News Leader from the period 1954, was it the practice of the newspaper in the area of real estate sales and rentals, that there were no separate classified columns for white and black; however, advertisers were permitted to use the word "colored" and "white" to identify individual classified ads. Is that your recollection, sir? A I don't know. I wasn't here then.

Q When did you come with the paper? A January, 1968.

Q Who on the paper has been here prior to that time, sir?

Mr. Donnahoe, is he one of the people that has been here during that period of time? A Yes.

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Q How about Mr. Leard? A Yes.

Q Mr. Leard, is he in the City, sir? A Yes, he is.

Mr. Lucas: Your Honor, we would call [K-88] Mr. Leard if counsel will not stipulate as to Exhibit 42.

[K-89] * * *

Mr. Gray: Your Honor, on behalf of the defendants, we will stipulate that whatever witness he was planning to call from the newspaper would state what was in that document, that he had in his hand, if so called to testify.

[K-120] * * *

EDWARD A. BECK

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

* * *

Direct Examination

By Mr. Byrne:

Q Would you state your full name and address, please, and identify yourself for the record? A Yes, sir. Edward A. Beck, Henrico County Manager for nearly 20 years, since 1952.

I was educated at VPI, graduated in civil engineering with special work in sanitary engineering and public administration and I have served as manager of South Boston, Virginia, Pulaski, Abingdon, Virginia. I have served in the United States Navy as a public works officer and have been the past president [K-121] of the local section of the Virginia National Association of County Administrators, the Virginia section of National City Management Associa-

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tion. I am presently an alternate member of the Richmond Regional Planning District Commission and will be a member of a local community college board and have been in other community activities.

* * *

Q Mr. Beck, would you state briefly for the record, the history of Henrico County, sir? A Well, I guess that Henrico County originally started back in 1611 and then became one of the original eight shires in Virginia.

In 1634, perhaps you would call it a county at that time. Henrico County has, at that time, [K-122] was described as being from Charles City County as far west as, I believe, as you could see, or as far west as you could go, which, I suppose, would mean it went to the Pacific Ocean. I don't know. But from Henrico County there have been at least ten other counties that have been formed, or parts of them, from the county which includes Goochland, Albemarle, Amherst, Buckingham, Cumberland, Fluvanna, Powhatan, Nelson, Chesterfield, and part of Appomatox.

In 1742, the Richmond Town was formed in a part of the county and then for a period in the 1800s, and following, there was a period in which parts of the county were annexed to the City of Richmond and have been made into a part of the City of Richmond by annexation which at one time was a legislative act and then another, more recently, since about 1902, I believe, under the new Constitution, have been judicial acts.

Henrico County was the first county management government in Virginia which was adopted in 1934 under the general law.

It has been recognized as sort of a model government. It was written up in the early days in the Readers Digest,

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has been the subject of a [K-123] number of theses and reports by various universities and colleges including the University of Virginia.

The boundaries of the county have been established, as I have indicated, through either legislative or judicial procedure, but as far as I can determine, there has never been any racial purposes as far as the boundaries are concerned.

Today the county's population is approximately 160,000, contains about 240 square miles, and has many residential areas.

Some 30 or more shopping centers. Some are the largest in the area.

We have a growing industrial and commercial development in the county.

I think that gives you some idea that we must have a government that has tried to keep pace and stride with the growth that has come.

I didn't point out that in 1942, right after World War II, there was an annexation in '42 and right after World War II, the county's population became about 25,000.

In 1950 it had developed to 57,000 and in 1960 to, I think, 116 or 117,000.

Q Mr. Beck, you were present when Mr. Howe Todd testified in this case? A Yes, I was.

Q Did you hear Mr. Todd's reference to Richmond School Board Exhibit Number 60, which I identify for the record as the 30-minute travel time to Capitol Square, 1810, 1920, 1957 and future. Mr. Todd indicated that this exhibit would show that people who lived within that travel time would work in Richmond.

Do you, as an administrator, have any comment with

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reference to that statement by Mr. Todd? A Well, it is true that people generally want to be relatively close or near to their jobs, particularly one-car families and people who have to depend upon public transportation. However, I would say that there are many people that work in Henrico County that, according to the information I have, commute from Amelia, Nottaway, Charles City, Chesterfield, Prince George, Hanover, Goochland, Louisa, New Kent, Powhatan, Colonial Heights, Hopewell, Williamsburg, and I believe even some from the City of Richmond.

It is interesting, in fact, that I have a secretary in the office that has for some six [K-125] or seven years, commuted back and forth from Louisa County.

So I am sure that there are people that commute some distances, particularly with the development of the better means of transportation and highways.

I am also sure that there are people that commute from the counties into the City of Richmond, including, of course, Henrico County residents.

Q Now, Mr. Beck, referring to Richmond School Board Exhibit Number 55 and Number 56. For the record, Number 55 being designated as "Comparison of Employment, Richmond Metropolitan Area 1970," with 50, which I have marked 55-A and attached to it. Number 56 being "Percentage of Employed County Residents Who Work Within the City of Richmond."

Have you made any study of the exhibit, particularly Number 56, sir? And if you have, would you state your findings? A Well, Exhibit 56 is the one that shows a 66 percent commuter population into the City of Richmond.

Q From Henrico County? A From Henrico County. And 48 percent from Chesterfield.

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[K-126] The U. S. Census data that I have available would indicate that there is about 70 percent in 1960, I think, that commute from Henrico into Richmond and if I look at the City Exhibit 56, it appears that this was in 1966. It looks like the date on it, Annexation exhibit in the Chesterfield case. So I assume that data is a little later. So it shows somewhat of decline. It is apparent that from the Richmond-Henrico Annexation Exhibit, which was prepared in the Henrico case by Harland Bartholomew, the date is 1962, that this might be a figure that was used in this particular exhibit.

Q Were the percent, the same 66 percent— A I think it was just about the same.

I might say that another currently—I am looking at Mr. Bartholomew's exhibit dated 1962 and it looks like it is just about the same. I think it is 66.5.

I think we have made some studies in our planning office about this a little bit. The last year, or this year, it would indicate from a sampling that we took of some 87 firms, that about 83 or 43 percent of Henrico's residents work in the county, about 12 percent in Chesterfield County, and about 45 percent [K-127] work in Richmond and other jurisdictions.

I would think that this would show a trend toward a decline, so to speak, in the ones that come from Henrico into Richmond.

[K-129] * * *

Q What was Richmond's position with reference to the extension of utilities into the county during the period of annexation? A Well, we just couldn't work out arrangements. We had been working for some period of time on

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some cooperative negotiations over—started back [K-130] in the '40's, I guess, whereby the County would develop the internal water system and sewer systems and the City would furnish us a supply and then we would—and a means of sewage disposal. But during this period that we were in annexation, we had no contract. We had one that we talked about that I recall. I can't think of the name right now. But I do know that the builder went ahead on the assumption that he was going to work out something with us and it wasn't possible to do it. There was just a period of no utility development, practically, as far as these joint arrangements with the City of Richmond.

I think during this time that perhaps Chesterfield must have enjoyed a great amount of growth while this was going on.

Q Now, Mr. Beck, what has been the industrial and commercial growth in Henrico County in the last five years? A We have had a considerable amount of new industrial and commercial growth, and we are sort of proud of some of the things that are happening in the County, and are really excited about it.

We have had the BVD Corporation that has developed a large plant just recently in the county.

[K-131] Chrysler Corporation, B. F. Goodrich, A. H. Robins, International Paper, Union Camp Bag Company, Ruffin and Payne, a big building supply corporation, Everett Waddey, Georgia Pacific, Ethyl Corporation, and General Electric, and I suppose you would count C & P with their large data processing center which serves the whole state and the whole service area of C & P. VEPCO with their big service center for data processing and servicing area.

All those have come into the county.

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Q And has this occurred in the last five years since 1967? Or 1966? A These have all been in the last four or five years, yes.

Q Do you have any immediate prospects for the additional location of industry and commerce in Henrico County? A Well, we presently have pretty good indications that Western Electric is going ahead with a $9 million plant in the county, Nabisco Corporation has plans on groundbreaking for some 800,000 square feet of plant, which will be one of their largest plants and one of the most modern plants. We have talked with some other plants and industries, medical [K-132] supply and chemical supply companies, that are interested. But when you deal with some of these industries, they are not interested in having it disclosed who they are at the time until they are actually ready to move forward. But we have a number that currently have been talking with us.

[K-134] * * *

Q All right, sir.

Where has most of the industrial and commercial growth occurred in the county? A Well, the most recent part, and the majority of it has been in the eastern section of the county.

Q Would you tell us why, sir, in your opinion? A Well, I think that perhaps one thing that has happened, in addition to the utilities becoming available, has been some of our county road construction that we have had taking place in recent years. We had a road improvement bond issue that was voted by the people July of 1963. This included some circumferential highways, divided highways, four-lane high level type of construction such as Parham

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Road from River Road on over to 95 and Glenside Drive from Horsepen Road on over to 33, I guess it is.

Then we have put a main road, has been on that has been put in, Laburnum Avenue, which has [K-135] developed, that goes all the way around from practically the western part of the county to the eastern part. It crosses and connects to 5, State Route 5, in the eastern part of the county.

Darbytown Road, Charles City Road, U. S. Route 60, a connection with Interstate 64, Route 33, Nine Mile Road, Route 360, and then it goes into the City at that point and ties in with Route 2 and Route 1 and also with Interstate 95.

So this has been an excellent road for getting, opening up the area.

Presently we are working very hard to complete this section of road and have plans for completing it.

If we work them out to get a bridge across the river we will tie into 95 on the south side.

So it will truly open up the whole area down there.

Q Now, these roads that you have mentioned, Mr. Beck, the Laburnum Avenue and Parham Road and Glenside Drive, extended, were they constructed with any State and federal funds? A Well, the county operates its own road, [K-136] secondary road system, if you want to call it secondary road system, one of the two counties in the State that remained out of the State secondary road system. Arlington being the other.

We have operated our road system out of our funds that come from the gas tax, and then the bond issues. These roads that I have mentioned have been constructed primarily, have come from bond issue money that the people voted on and made possible through referendum.

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These roads, some of these county roads that I speak of, have traffic counts that go up into, oh, I don't know, 13 or 15,000, quite a few of them, in 24 hours, vehicles in 24 hours, which is a pretty high count on these type of roads that are supposed to be so-called county roads.

Q Does the county have any plans for the extension of Parham Road beyond Interstate 95 towards U. S. 301?

A In the master plan for Parham Road it is proposed to be extended on over, yes.

Q Mr. Beck, I will ask you to refer to Richmond School Board Exhibit Number 58, just for the record, entitled "Morning Peak Hour Traffic Volume at [K-137] City Limits" which purports to be done for a two-hour period from 7:00 a.m. to 9:00 a.m. during March of 1971 and ask you as an administrator and as an engineer, do you have any comment as to the reliability of such an exhibit? A Well, this is shown as a traffic count for the two-hour period in March, 1971, and it has on the diagram the width of line showing the relative volumes of traffic. Then there is the attached table of 58-A which shows the traffic numbers in this two-hour period for various roads where they apparently lie, put down the traffic counter. They had one column that is indicated city-bound and one column indicated county-bound. Of course, I suppose the observation could be made that this doesn't necessarily mean that all the cars that are city-bound or county-bound are strictly going into those areas only because these may be going on through to some other locality. That includes traffic that is going other places. So it doesn't show the origin, destination, or OD that is necessary to tell exactly where these people are going and what their purpose and so on is.

So it doesn't really mean very much if [K-138] we are

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trying to indicate that these are all people that are bound for the city or bound for the county.

[K-139] * * *

Q Mr. Beck, will you take that exhibit, [K-140] sir; it deals with the major public facilities. A Well, this exhibit says "Major Public and Semi-Public Facilities," recreation, education, cultural, transportation, and hospital.

Q Now, are there other facilities that are located within political boundaries that would tend to draw people to settle there? A Well, I think there—I believe from looking at this and knowing something of our area in Henrico County, there are other facilities that are not covered. There are country clubs, recreation associations. I think we have some, have some 18 of them that have swimming pools with them.

Q Now, sir, are they publicly owned or community owned or county owned or what? A Ones that are privately owned, but they are for the benefit of the public in the particular areas, yes, sir.

And they do enjoy them. There are some other facilities that are publicly operated. For instance we have some 50 locations in the county that operate recreational facilities. A lot of these, are, of course, at school sites.

Q Are you speaking of Henrico programs [K-141] for recreation, county programs for recreation? A Yes, sir.

Q Would you comment on that for the Court, please? A Well, we have a program with a full-time director of recreation. We have some 267 paid employees when it is at its peak. This includes the small clinics for boys, tennis instruction for boys and girls. We are very proud of the day

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camp that has been operated for retarded children for the last two years. People have been impressed with it.

Part of our recreational operation, we have a boat ramp on the James River. We have some 42 schools and other areas that have morning and evening programs in modern dance and gymnastics for girls.

So that between the publicly owned operations that the county has and these other facilities, clubs, recreation associations, I think the county has provided recreation for its people. And it is, of course, possible, that some of our people do use the city facilities. I don't have any question that that is true.

I go out to Bryan Park myself at azalea [K-142] time. It is a beautiful time to go out there.

[K-144] * * *

Q Do you have any figures, Mr. Beck, that you obtained from the Bureau of Vital Records and Health Statistics with reference to the births from Henrico County occurring in Richmond? A We have from the Virginia State Department of Health for the years 1965 it shows that there were about 98.4 percent. 1968, 70.9 percent.

The Court: Let me get it straight now.

What is your question exactly, Mr. Byrne?

Mr. Byrne: If he has any statistics from the Bureau of Vital Statistics, Judge, which shows the births during this period of residents from Henrico County in the City of Richmond.

[K-145] The Court: I see.

Mr. Byrne: The purpose being to show that a decline that is fairly evident—

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The Witness: Well, it is entitled "Percent of Specified City or County Resident Births Occurring in Richmond." And as I stated, in 1965 it was 98.4 percent. '68 it was 70.9 percent. '69 it was 70.1 percent and in '70 it was 65.7 percent.

By Mr. Byrne:

Q Mr. Beck, would this take into consideration the fact that St. Mary's Hospital, which is located in Henrico County— A St. Mary's is in Henrico County. I think it was opened about 1966 and it has recently completed an additional wing and one or two floors. So a lot of the people in the County, I am sure, use St. Mary's Hospital. That would possibly account for probably for some of this decline in population since they are—use the county facilities, which is a private facility, however.

Q Mr. Beck, can you compare the Richmond School Board's exhibits with its figures that go back to 1963 to show certain things and update those figures? [K-146] What would the facts disclose by the updating of the figures indicate? A State your question again, Mr. Byrne, please.

Q All right, sir.

When you compare the Richmond School Board Exhibits that go back with some of this source to 1963, for example the number or percentage of residents who work in the City of Richmond, 66 percent figure, and bring those up-to-date with the figures that you have obtained, what does this indicate as between Richmond and Henrico, if anything? A Well, I think that there is an indication here that there has been some decline of interdependence of the county people on many City facilities and on their actual needs from the City with the use of other things that

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e county has been able to provide in the way of their own cilities.

Generally that is the observation, I think, that could be awn from it.

It has been sort of necessary in this period of time for the unty to have to develop its own community and try to ake a community and satisfy the community needs.

[K-147] This has been pretty essential because there as been, as I stated earlier, there has been a period in hich we did not have as good, favorable and desirable operation in some of our joint efforts with the City of ichmond.

K-157] * * *

Q Subsequently, was that case litigated in the State ourt? A In the State Court?

Q Yes, sir. The Annexation Court? A Annexation ourt, yes, sir, over a period of time. It was a very impor- nt couple cases that went up to the State Court of Ap- eals a couple of times during the course of it.

[K-158-9] Q All right, sir.

Do you have Henrico Exhibit Number 7 in front of you? Yes, sir.

Q Would you identify that as the opinion of the An- exation Court and the Annexation Decree dated April 27, 964? A Dated what, sir?

Mr. Byrne: If Your Honor please, this might be confus- ng for Mr. Beck. The opinions of the Court were two and ney are in reverse chronological order.

One they made the award and two they set up how it was o be paid for. Then the final decree.

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The Court: Help him out.

Mr. Byrne: And I put them only as one exhibit, sir.

By Mr. Byrne:

Q Do you recall April 27, 1964, the Annexation Court made an award to the City of Richmond in that case? A That is correct. I remember that they announced the award of some 17 square miles and 45,000 or 48,000 population. Something like that, sir.

[K-160] Q All right, sir.

Then subsequently the Court entered a decree saying how Richmond was to pay for the annexation area? A That followed after the Court drew the lines and—that they were going to approve. Then we had to go back to work and make up the balance of the equities and all the facts that came along with distribution of different assets and so on, yes, sir.

Q Is that part of the decree dated January 20, 1965? A This looks like—yes, sir, that's right, sir.

Q Now, referring you to Henrico Exhibit Number 7, the Court entered an order of dismissal in the annexation suit on March 10, 1965, is that right? That would be the top of the page.

The Court: If you know that is so, that is so.

The Witness: Yes, sir. I find it, yes, sir.

The Court: It is a little hard.

By Mr. Byrne:

Q Referring to Henrico Exhibit Number 8, [K-161] Mr. Beck, that purports to be or it is, rather, a copy of an ordinance adopted by the City Council for the City of Richmond on March 8th, 1965? A Yes, sir.

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Q And does that reflect the annexation award of the Annexation Court? A This is an ordinance, City of Richmond, that declines to accept the annexation granted.

Q All right.

Does it have the vote on that ordinance? A Has a vote here of eight to nothing with Mr. Wheat being absent.

Q At that time, what was the racial composition of City Council? A Well, the members that voted and are listed on here, there were seven white and one black, as I recall.

Q What is the name of the black councilman? A Mr. Cephas.

Q Did he vote in favor of the rejection? A He did, according to this, yes, sir.

* * *

[K-162] Q Mr. Beck, did you have school authorities of Henrico County compute for you the school population in the annexed area as of the Court decree in 1965 as to white and black? A You are referring to the proposed area that the City rejected?

Q Yes, sir. A We had, in the course of the case, any number of exhibits with census tracts on it and so after the case, and recently we asked our research people to look into it. They computed that during the annexation, or at the time of the decree, that there would have been 8,047 students white and 124 black had the City accepted this decree.

Q All right, sir.

Have you had it computed as of 1970 census [K-163] in the same area? A Using the same basic information that

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our people had, and updating it to 1970, U. S. Census, it appeared that the same area today, there would have been 7,950 white and 850 black by their counts.

Q All right, sir.

After the City rejected the award on March, 1965, what occurred, if anything, on May 28, 1965 that would have any effect on the county relationship? A May 28, 1965 the City Director of Public Utilities wrote me that the City Council on May 24 adopted new water rate schedules, and "I am enclosing a copy of the ordinance."

Q All right, sir. Just briefly, what effect did that have on the existing contract with Henrico County as to the rate charged? A Well, it increased it from an average cost of about 17½ cents per hundred cubic feet to 25 cents a hundred cubic feet on all water.

Q Had there been any prior official notice of the City's actions? A Not to my knowledge.

Q What was the result of this letter as [K-164] far as Henrico was concerned? A Well, I suppose—

Q What effect did it have on the county administration? A Well, I suppose that I could say that in the least that the Board of Supervisors were pretty upset and quite an amount of furor that sort of developed in this because of this. It was interpreted by some that this was a retaliatory type of thing. I think they felt pretty upset about it. It was sort of unfortunate, I believe, that it should happen then, particularly during the course of an annexation case. There is a lot of bitterness and animosity that develops, unfortunately.

And following the final decree of the annexation, I had attempted to try to improve our working relations with the

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City and had written the City Manager a letter indicating that we would like to work in a cooperative manner.

Q Did you ever get a reply to that letter? A I don't believe I did, sir.

Q What effect did this have on efforts for cooperation with the City of Richmond subsequent to the annexation suit? A State your question again, please.

[K-165] Q What effect did this have on efforts towards cooperation with the City of Richmond after the annexation suit?

To be more specific, Mr. Beck, did you attempt to work out a joint cooperative library with the City of Richmond? A Oh, yes. We had been talking since 1963 over a period of time.

Q Well, did you resume those talks? Did you attempt to resume those talks after the annexation suit? A There were attempts to do that. And there were meetings, numerous meetings.

I didn't attend all of them but our library board did, and others.

Q Were you able to work out a joint cooperative library with the City of Richmond after the annexation suit? A There were many efforts made. Actually there was a change made in the State law to try to make it more workable. The time went on. It had been 1963, I think it was, when the county voters had approved the library construction program. So with the continual delays and the apparent impossibility to [K-166] working out a satisfactory arrangement, finally it just broke down to the point that they felt, the county felt it couldn't wait any longer and would have to move ahead and did move ahead. And we

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do presently, I think, have a real good base. We have two new libraries, two new library buildings. We are renting other space, and we are in the library business.

[K-170] * * *

Q All right.

Mr. Beck, referring you to the water and sewer contracts which have been introduced here by the Richmond City School Board, dated 1968, and I don't have the number in front of me, but I believe you have a copy of each of those contracts there. Were you present when Mr. Lordley testified with reference to these contracts? A I was.

Q Were you present when he was cross examined as to the wording in the preamble? A I was.

* * *

[K-171] Q All right.

Mr. Beck, were you present at all times in the negotiation of these contracts in the meetings with the City? A I think I was in on most of many meetings that we held discussions. There may have been some of the meetings between a board member or a City Councilman that I didn't attend, but as far as the City [K-172] administration and as the committee that the City had appointed at that time, that they called a utility committee, they had indicated that they wanted to try to work out something. In fact, I think there was some pressure placed on them to try to work out something. That this was, I am not sure what organization or what parties were doing this.

Maybe the Chamber of Commerce or some other, to try to resolve this difficulty.

Q During this period of negotiation—

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The Court: Just a moment, Mr. Beck. We have to be a little more responsive to the question. The question was, were you present during the negotiations. I take it the answer is, yes.

The Witness: The answer is yes to all the major meetings that I know of.

By Mr. Byrne:

Q All right.

During this period of negotiations leading up to this contract after the annexation in 1965 up to 1968, had the county conducted its own studies as to furnishing its own utilities? A Yes. We had made some studies.

Q Would you state what they were, sir? [K-173] A Well, we made several studies. We were concerned about water. We actually went into some joint studies with Hanover County on developing the water resources in the Pamunkey River with the possibility of providing a water authority to serve and then—

Q Did those studies indicate that the use of the Pamunkey River was feasible and Henrico could establish its own system there? A It indicated that the two counties could develop a water source that would serve both counties, and particularly Henrico. We had quite an extensive engineering study made on it, yes, sir.

Q All right, sir.

Did you have any othr studies with reference to water? A In reference to water we got an international outfit of consultants to make some studies on subterranean water supply. This was devoted primarily in the eastern end of the county.

We knew that down in, say, Chesapeake area the corporation had some big wells that served them. We knew that these people that we had had made studies for many cities. I think they were currently [K-174] making one for Dayton, Ohio.

Now, how they made a study of some—wells for us and determined that we could develop, a very large source of supply in the eastern end of the county by wells system.

Q Between those studies, Mr. Beck, did you determine that you could furnish the water that would be needed by Henrico County without any help from the City of Richmond? A Well, yes. We thought we could do that. We had some others, too, that we looked into, but we figured that if we weren't going to be able to negotiate a realistic contract, or one that we could live with and had to have our own, that we could do it. We looked into the possibilities of going up the James River, further up than Bosher's Dam. We knew there were certain water rights. We had some attorneys and other people work with us and consulting engineers and worked out a plan that might have been possible for bringing a long aqueduct down to serve the county there. It appeared that there were possibly three sources at least that we could work out an overall county water supply.

Q All right, sir.

[K-175] Did you have similar studies done with reference to your sewer? A We had consulting engineers during that time look into a plan of overall or county-wide sewer system. We had a rather extensive report made on how we could develop it and provide sewage disposal on our own.

Q Now, sir, getting back to the language that you read

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from the contract, was that language insisted upon by Henrico County? A Yes.

Q What was the purpose and intent of the language in those two contracts? A Well, having had some unpleasantries, I suppose you would say, in the past few years; the county felt that because of their negotiations on trying to work out something, and the fact that these are used in annexation cases and consolidation and mergers and so on, to show that the county is dependent upon the city and that they can't operate without them on their own utilities, it was determined that some such language as this should be put in no matter. We didn't know what might come up, but something to protect us to see that these wouldn't be used as an [K-176] argument in any, I suppose, law suit, if you want, or litigation, I guess you would call it, since that is what some of this is. They shouldn't be used in litigation against us of trying to show that there was any dependence of the county.

Q All right, Mr. Beck.

Does Henrico County have its own data processing center? A Yes, it does.

Q Does it have a combined purchasing department— A Yes.

Q The county administration of the School Board? A Yes, it does. We have other. We have our own data processing center and we are presently updating it with the newest equipment a 9400 piece of equipment that is supposed to be very sophisticated and able to handle quite extensively all of the operations.

Of course, we serve the schools and other county functions, the utilities and our purchasing.

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We do purchasing work for schools and [K-177] roads and for all the county activities. It is a centralized purchasing, and to a certain extent some personnel work.

Q Does Henrico County depend upon the City of Richmond for fire protection? A No, sir. We have our own fire division at the present time that is capable of handling the county.

Q How many fire stations do you have in Henrico County? A We have ten stations. We have 13 companies. Some of our stations are dual companies, aerial and pumper companies and housed in the same station house. Q Are these manned by paid or volunteer employees? A Well, it is a little unique in the fact that we have about 108 paid personnel and each company is authorized to have up to 20 volunteers. But the paid, between the paid and the volunteers, they meet up to the requirements. We go to the underwriters to rate the county, of course, and in most of the areas we have about the highest or the best rating, most favorable rating, that we can get for this type of operation [K-178] without considerable expense.

Q All right, sir.

Does the County of Henrico depend on the City of Richmond for police protection? A No. We have our own police and it is under the Department of Public Safety, the same as the fire, which is one of the administrative departments of the county. And it has a sum total of 207 total personnel including school guards, some 16, some 20 officers, dog wardens, civilian personnel, and our patrolmen.

There are about 60 to 70 pieces of equipment, motorized equipment, including a crime lab, mobile crime lab.

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Q Mr. Beck, how is ambulance service furnished the citizens in Henrico County? A Well, basically it comes through the volunteer rescue squads. There are three of them in the county. These are private, non-profit organizations that do a terrific job in assisting people when they are in trouble and need ambulance or other services. They are very active.

Q Totally volunteer, aren't they? A Yes, sir.

[K-179] Q Now, Mr. Beck, I am going to ask you to refer to Plaintiffs' Exhibit No. 91 which I believe you heard Mr. Henderson testify was a letter that he received from you as a result of an application that he made to the Board of Supervisors for a resolution for Section 221-D-3 Public Housing Rent Supplement in Henrico County.

Do you recall writing that letter? A Mr. Byrne, what is the date of the letter, sir?

Q I don't have the date in front of me. It is a reply to Mr. Henderson with reference to the Board's denying or refusal to pass a resolution. A I think it is a letter of November 16, 1970.

Q May I have the exhibit?

May I approach the Clerk, sir?

The Court: PX-19.

Mr. Lucas: I have a copy, Your Honor.

Mr. Byrne: That is good enough.

The Witness: Decmeber 11, 1970. I am sorry.

By Mr. Byrne:

Q Now, Mr. Beck, would you explain to the [K-180] Court the circumstances that led up to your writing that

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letter to Mr. Henderson? A Mr. Henderson had a zoning case in the county in the east end. I think it was the early part of 1970, the exact date I don't recall, in which he asked for residential type of zoning.

Q Is it multi-family? A Multi-family zoning. And part of it was denied by the Supervisors because, as I recall, there was a State Highway Department that was in the process of studies and planning for relocation of Route 60, I think this was, down close to Whiteside Park. The access and the changes that were going to be made in the highway, as I recall, rather critically affected the plan of development. And he didn't really bring in any plan of development, as I recall the case.

Now, he then, after the case—

Q Did he have a 13-foot right-of-way access into that property taking into consideration what the State Highway Department was going to do with reference to the relocation of Route 60? A I don't recall the figure, but I know there was some access problem. There was a question, that seems to me that there be a question of a large [K-181] ravine that was involved. The exact figures I don't remember, Mr. Byrne, but I do know there were access problems developed by this relocation.

Anyhow, the Board did go ahead and grant part of it. There was some discussion about later on coming back on the other after the plans were firm, I believe, or some plan of access was worked out. Then he came in and discussed with in the manager's office the possibility of getting the Board to pass a resolution under this program for rent supplement which we, which was, as we understood it, would be an authorization on the county-wide basis. We were not, had not had any experience with this type of reso-

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lution and action and we were not familiar with the procedures and what was required in order to go to the Supervisors with it. We had several discussions. One of our administrative assistants talked with him and I think we wrote him and asked him if he would give more specifically just what it was that he wanted and the form of it and more information about what the program was at the federal level and what it meant. He did write subsequently and furnish us some information. We read it and looked into it. I talked with some of the FHA people. We were told that there was another program that didn't require the same resolution on a county-wide basis referred to as the 236 program, I believe, and that he could operate under that if he wanted to.

So we had no housing authority and no housing studies made to the extent of going into an authority, and it appeared that he could still accomplish his rent supplement program under this 236. So the Board denied passing this county-wide resolution that was given to us by Mr. Henderson.

Q All right.

Did he ever bring to you any feasibility study from FHA with reference to this project? A Not that I know of, sir.

* * *

Q Mr. Beck, how much is spent in Henrico County from all sources of general funds for public education per year? A Well, it runs about 75 percent of our [K-183] gross revenues are for schools and education.

Q Mr. Beck, as an administrator for municipal government, do you see any practical difficulties in the implementation of a plan such as that proposed by the City of Richmond, by the School Board and the City of Richmond,

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excuse me? A You are referring to the consolidated school plan?

Q Yes, sir. A Yes. I see a number of things that would be of concern.

Q Would you state those to the Court, sir? A Well, we are talking about three separate and equal political subdivisions under our Virginia law of separation of counties and cities. One which would concern me very much is the support that some of our people in each of the areas might give to this. What their reaction to it, particularly the difference in the method of appointment of the School Board as a point on it.

Each of our political subdivisions, I believe, appoint their School Board differently. In Chesterfield, the school electoral board, I may not have the exact title, Judge, but anyhow, they appoint it [K-184] through that method.

Richmond City Council appoints it for fixed terms.

Henrico for all of these years has appointed it by the Board of Supervisors and they serve at the pleasure of the Board. The Board considers that the School Board is responsive to the people, more responsive to the people this way.

That is one difference.

One consideration is the method of the formation of the School Board.

One real serious thing that would concern me is financing, capital construction. That is that in the counties we have to have bond referendums voted by the people for building new school buildings.

The Board of Supervisors, after the School Board goes over their needs with us and meets with the Board and tells them what they want, they come up with a program

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for new school buildings and put it out to referendum. Normally both Boards are in support of it and put it to the people. It has to be passed by the people.

Q Is this true in Richmond— A No, sir.

[K-185] Q —in its form of government? A I think they can pass their issues, their bonds for construction as just general obligation bonds. I believe they are done through City Council.

So the matter of bond issues would be one thing that would be a real serious, could be a real serious problem if the people were not in support of the program. There is a difference in tax structures that would have to be considered, I think.

Each of the political subdivisions have different tax rates. They have different ratio of assessment, and even to some extent different dates of collections.

So there could be some problem on that.

Then I suppose that I should say that the three political subdivisions in this matter are three relative forms of government in a sense.

The City of Richmond has City Council-Manager form of government, but Henrico County has County Manager form. But there are some important differences, I think, in it.

We have, for example, administrative setups that provide for the appointment of a director [K-186] of finance instead of the matter of a treasurer and commissioner of revenue elected. We have a lot of things that are different in its organizational structure than the City setup.

Chesterfield has the executive secretary which is appointed by the Board and, as I understand it, a lot of this is done by ordinance and was not established by referen-

dum, the same as the county manager. It does not have some of the same authority to act in many matters as you do under the county manager plan.

So I think that there are three different governments and they should be recognized as that.

The schools are, as has been indicated, are a rather large part of the county government in the sense of the amount of the budget they require, and I would think that it would be virtually ultimately could be destroying certainly our government in the way we know it now.

L-4] * * *

PROCEEDINGS

September 1, 1971) (Wednesday, 10:00)

The Clerk: 3353, Carolyn Bradley, et al., versus the City chool Board of the City of Richmond, Virginia, et al. Case continued from yesterday.

* * *

Cross Examination

y Mr. Lucas:

L-7] * * *

Q Where is your office located, Mr. Beck?

* * *

The Witness: 21st and Main Streets, and 22nd and Main the courthouse. Technically these are by acts of the General Assembly placed so that they are in the county.

y Mr. Lucas:

Q Are they geographically within the city limits of ichmond? A City of Richmond surrounds them.

Q So you come into Richmond every morning [L-8] your office, is that correct? A I come in, if I come to my office every morning I come into the City of ichmond.

Q If you have a fire in your office it is serviced by the ichmond fire department, not the county, is that correct? I think on the occasions the City has responded to it. think our own people have also come in to help in matters public safety.

Q Come in from the county when you had a fire? A We have fire stations reasonably close to come in and provide assistance if necessary.

Q So that your fire department services or can service the City of Richmond, it is that close together, is that correct? A There is a fire department and it can come in if it is necessary. But I think on several occasions it has been handled by the City of Richmond.

Q Do you shop in the City of Richmond, sir? A I shop in the City of Richmond, I shop in Henrico County, I shop in Norfolk, and I also shop in Washington, New York, and any number of other places.

[L-13] * * *

Q Are there any other joint utilization of space and facilities between the county and the School Board that you know of, sir? A Well, as I say, we have many services that are coordinated between the various offices and the School Board uses, your centralized purchasing office which is on Main Street near our other office.

Q Let me interrupt you on purchasing.

Does the School Board have to submit to you their list of needs and your purchasing agent sets up the bid specifications for products needed?

[L-14] A The purchasing agent handles the receiving of bids of the various departments including schools. These are usually the departments write their specifications and needs. He takes bids on them, works with the department and finally issuing purchasing orders, purchase orders.

Q Do they have people stationed at that office working with the purchasing agent? A I don't believe there is

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any personnel that are directly on the school payroll that stay there full time.

Q That office is also located in the City limits of Richmond, is it not? A That is correct.

Q What else, sir? A Well, they have a data processing center which is located in a building that was formerly a school, which the school officials have turned over to us so that we can have it remodeled and made it into space for our data processing center, a board room, extension service, our utility building is handled out of it, and the school people come to that office, the central data processing center, and work with them there.

[L-15] * * *

Q Generally title to schools is vested in the School Board separately from the county, is [L-16] that correct? A I can't say that in all cases that is true. I think it generally is that most of them rest with the School Board, but I am sure I cannot be certain that there may not be some properties that the School Board uses that are in the name of the county and that I know there our real property agent, who is a staff member of the county organization, handles the negotiations for property for school sites, and we would have to ask our legal officer as to exactly how the titles are. I don't recall all of them.

[L-17] * * *

Q You testified, sir, that there were a number of new businesses, industries, coming into Henrico County. You also testified about a sample that you did of some, was it 86 businesses? Can you [L-18] tell me about that sample again? A Our planning people attempted to make some

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studies relating to employment and commuting. I think there were some 87 that they contacted. They considered, based on their survey, that they had a fairly good response, as surveys go. Some 67½ percent representing some 9500 employees. They considered that, I think it was 27 percent of the county employment total work force, people employed—

Q What was the result of that survey? A They indicated that of this group, 43 percent were employed within Henrico County. 32 percent in the City of Richmond, and 12 percent in Chesterfield. 13 percent in other jurisdictions.

[L-20] * * *

Q The question, sir, is are these people, in your opinion, attracted to Henrico County because of the high quality of the transportation system in the county? A I refer to transportation as one of the things, and not public transportation, but access, yes.

Q There is good access. There is good roads in the county? A Yes.

Q What about good schools? A We consider that they are good schools.

Q What criteria do you use, sir, in recommending these schools? [L-21] A Well, I would have to rely upon our school officials to tell you their basis of considering our schools, but some of the things that they consider, I know, are the ones that go ahead and go to college, the results of how they do in college work, their consideration of employment, what they do after they leave school. I think they make those type of surveys.

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Q Achievement levels in the school? A And achievements, and so on.

Q Do you know what the black employment is in these new industries coming in? A I do not.

Q You mentioned something about a good labor market in the county as being one of the reasons that attracted them. How do you define a good labor market? A I didn't say there was a good labor market in the county. I said that industry considers the labor market and the availability of a labor market.

Q You listed in your testimony as one of the things that attracted them was that you had good labor market, good roads, good utilities and good schools. A I said that the labor market in an area is one of the considerations. They ask about it. They ask us to obtain from the employment office, the State [L-22] employment office, labor information as to specific needs that they may have, the types of skills of people that are within the area.

[L-22] * * *

Q In general, is there a large community of unskilled labor available in Henrico County? A I think that the information that is available, has been made available to me on the amount of labor available in the county is generally that employment in the Richmond area is—there is very little unemployment in the Richmond area.

Q Do you know what the unemployment rate for black people is in Richmond, sir? A I do not.

Q Do you know that it is much higher than it is for white people? [L-23] A I do not.

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Q If not very many black people live in Henrico County would you expect that the new industries locating there would be able to hire black people? A Well, I can tell you our own experience in employment.

Q Just answer my question, please, sir. We will get to your own experience.

The Court: I think he is trying to answer it in his own way.

The Witness: You are right, in my own way.

Well, we have to find employees in many areas. We have some black people that come from Louisa County. We have quite a few that have to come down from Louisa County.

By Mr. Lucas:

Q Where do they work? What kind of departments? A Some of our utilities and departments. We have also—

Q Excuse me. Are those mostly unskilled positions or semi-skilled at best? A I would say that they are semi-skilled. [L-24] Most of them that I know of.

Q They find their way into Henrico County from another county to work there, is that correct? A Our experience indicates that we have a great deal of tie-in, recruiting personnel in this area, skilled, unskilled, all.

Q Including all personnel or recruiting black people? A Well, our recruitment problems on all personnel is difficult. We have vacancies that we try to fill in all types. We don't try to fill personnel by whether they are white or what color. We try to fill them whether they meet the needs.

Q Almost a hundred percent of your employment above the unskilled level, above the janitorial position, is white,

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isn't it? A I would guess that that probably is true. I might add, if I may, that there has been absolutely no restrictions that we have enforced or tried to administer that would keep us from employing black as well as white. We try to employ, if they meet the requirements of the position open.

In fact, we have even made efforts through various contacts to let people know that we are anxious [L-25] if they are black people that meet the qualifications for police or fireman, or whatever they may be, clerks, stenographers, anything else.

Q Do you have a requirement they have to live in Henrico County, don't you? A We have only a requirement that relates to the police, and that has been relaxed. That has been a requirement for many years.

Q When was it relaxed? A Oh, I think it was within the last year.

Q When did you hire your first black policeman? A It seems to me that sometime in the last year that—

Q Last two months would be more accurate? A I don't know the date, sir.

[L-28] * * *

Q Do you feel that this case, sir, is an attempt by the City of Richmond to annex the County of Henrico? A Well, it appears to me that the way it has been handled in the testimony and the general procedure, it is another way of trying to accomplish by the back door what they can't accomplish by the front door, and they are getting in another way.

In a personal opinion, and that is what you are asking,

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I suppose, it looks like to me that it is more than anything else, some form of merger or consolidation or boundary expansions, or annexation, or whatever you want to call it because it certainly appears that as far as a straight question of schools and the matter of racial desegregation of schools, I don't see that that has been the main thrust of it.

Q Would you oppose the desegregation of the schools if the county school system was kept intact, [L-29] if they just operated by agreement, by contract or by court order? A Well, it is—let's take the question a little bit differently.

Q Would you be opposed, let me rephrase it. I think I can help you. Would you be opposed to the integration of the schools, assignment of children between the City and the county if there was some way to maintain a separate identity for the county School Board in such a system? And I cite to you the example of operating by contract. A First, I don't oppose the desegregation of the school systems. I think it has been the attempt of the county to desegregate its school system.

Q Sir, you can refer to that later. Will you answer my question? A Now, the question, if I understand it, you are asking would I oppose the complete consolidation of our school system?

Q That is not my question. My question is, would you oppose the assignment of pupils and teachers in such a way as to integrate the Richmond and Henrico school systems with each other but maintain a separate identity to the Henrico County School Board? And I again [L-30] cite to you the example of a contractual arrangement between the two boards. A Oh, I think that the county school system should be retained as such and I don't think—

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Q I am assuming that. I am assuming would you oppose the assignment of the pupils pursuant to such a contract in order to desegregate the schools, pupils and the teachers. A For a personal feeling, I feel that the county schools should be maintained and we should operate our own schools and if there are special educational—

Q Assuming you were going to operate those schools but you were by agreement, by contract, as you have contracts in other areas, assigned pupils across the boundary so that the schools are desegregated, do you oppose that? That is my question. A I would say I do.

Q Why? A Well, I think that the county has an identity of its own and should operate its own school system and should have its own schools. There are special educational needs, such as we have talked about earlier in this case, if there are, as has been talked about earlier in this case, for certain special things [L-31] that they might join together, but a complete contract for the whole operation I think would be a mistake. I think that it completely destroys the county operation.

Q Why does it destroy the county operation? Do you really mean it destroys the white schools of the county, the so-called good schools? A I am not identifying them as white schools. I think that it destroys the general administrative set-up and operational arrangements that the county has and its general plan of government.

Q Don't you operate other things by contract and maintain your separate identities? A Would you mind telling me specifically what you refer to?

Q Aren't there joint services operated between the City and the county with the rights and obligations of each

spelled out? You don't lose your identity as Henrico County when you do that, do you, sir? A I assume he is referring to utilities. I think I should make it quite clear exactly how the utility system operates.

[L-36] * * *

Q Sir, do you recall a bill that was pending in the legislature with respect to the joinder of Henrico and Chesterfield County in 1968? A A bill that was a joinder?

[L-39] Q Called for the merger of Richmond and Henrico County.

Let me see if I can refresh your recollection. Plaintiffs' Exhibit 121, which is the minute of the Henrico County Board of Supervisors, contains a resolution.

This appears in the meeting of February 14, 1968, volume 22, marked on the exhibit as page 13, the printed number from the book being 336.

Would you read the motion of Mr. Ragsdale? A "On motion of Edwin H. Ragsdale, seconded by L. Ray Shadwell, Jr., the following resolution was adopted;

"Whereas a bill to provide a forced merger between the City of Richmond and the County of Henrico has been introduced to the Virginia General Assembly;

"Whereas this bill is a coercive measure which would dominate the will of the people of the County of Henrico and the City of Richmond and compel the two jurisdictions to enter into this merger without freedom, without choice, and without the predetermination of their people;

[L-40] "Whereas, this bill is contrary to all the principles of the Virginia General Assembly in that it would take away the rights of self-determination in a local governmental unit and;

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"Whereas the County of Henrico and the City of Richmond did previously appoint negotiators to consider a consolidation or merger and;

"Whereas in a referendum on December, 1961, the people of Henrico defeated the plan of merger and;

"Whereas just three short years ago the City of Richmond rejected the award of 17 square miles in Henrico County made by the Annexation Court thereby denying the need for boundary expansion of the City and;

"Whereas the multiple provisions of this bill could be applied to other municipalities across the State and;

"Whereas the Henrico Board of County Supervisors is opposed to this unconstitutional measure;

"Now, therefore, be it resolved that the Henrico Board of County Supervisors does hereby request executive director of the Virginia Association of Counties to take positive action on behalf of the County of Henrico and all members of the association as vigorously opposed [L-41] to this insidious legislation;

"Be it further resolved that certified copies of this resolution be forwarded to all members of the Virginia Association of Counties, its executive director, and members of the 1968 Virginia General Assembly."

[L-43] * * *

Q All right, sir.

Directing your attention to the minutes of February 16, 1968, volume 22, page 15 in the exhibit numbered 357 in the original book, would you read the resolution adopted on that page? A "On motion of Edwin H. Ragsdale, seconded by L. Ray Shadwell, Jr., the following resolution was adopted, the members voting as follows:

"Ayes: B. Earl Dunn, Edwin H. Ragsdale, [L-44] L.

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Ray Shadwell, Jr., Anthony P. Mehfoud, Linwood E. Toombs, nays: none.

"Whereas, the U. S. Department of Health, Education and Welfare has charged the Henrico County School System with failing to make sufficient progress toward school desegregation, and more specifically that officials are maintaining small inadequate schools, and that the educational program at Virginia Randolph High School, in particular is 'demonstrably inferior' to other schools in the system; and

"Whereas, it is the contention of the Henrico Board of County Supervisors, that the democratic principle of complete freedom of choice for every child, under which the county system is operating, meets the needs of the people of Henrico County and provides a program of quality education for all students; and

"Whereas, these records show tha. over 42 percent of the non-white students are presently attending integrated facilities; 27 of the county's 41 schools are now desegregated; that there are no inadequate schools operating in Henrico County; and the claims of the U. S. Department of Health, Education and Welfare regarding the inadequacy of Virginia Randolph High School are without basis in fact; and

[L-45] "Whereas, the county's governing body is maintaining a policy which faithfully reflects the wishes of the people.

"Now, therefore, be it resolved, that copies of this resolution and copies of a Richmond Times Dispatch article of February 2, 1968 in support of the county's position, be forwarded to the Secretary of the Department of Health, Education and Welfare, the U. S. Office for Civil Rights, and to Henrico County's Congressional representatives in Washington; and

"Be it further resolved, that Henrico County's representatives in Washington be requested to include this newspaper article in the Congressional Record to repudiate the aforementioned accusation.

"The newspaper article referred to above is in the following words and figures:"

Q It is attached as the next page, 16, of the exhibit, is that correct? A Appears to be the same referred to.

Q You discussed tactics, you criticized as poor tactics in the merger proposal. At that time the Richmond papers were supporting editorially the concept of a consolidated government, consolidated school system, merger of all facilities. This would be in 1961, is that [L-46] correct? A That is the correct date.

Q At that time the schools were segregated, weren't they? A I am not sure when plans were first submitted. I assume that they had not submitted plans to HEW at that time.

Q Civil Rights Act was not until 1964. At that time the schools were segregated, is that correct? A They would be. They would be. They would be.

[L-57] * * *

Q Your Board of Supervisors, did they vote to reject this application to Mr. Henderson? A They did not—they voted not to pass the resolution. That was a County-wide application, yes.

Q You testified about the agenda set up by your office for each meeting. Did you have that—do you draft resolutions in advance of what is proposed, for instance, for

sewer and what have you? A We draft a resolution that is in the form that can be used by the Board, yes.

Q Did you draft such a resolution for this matter? A I am sure we drafted something that could be used for it.

Q Did your office recommend it as the administrative officials? A I think we did not recommend it.

[L-58] Q Why didn't you recommend it? A Again we thought this was a county-wide application or resolution and we did not have a housing study and authority and so on for a whole county housing program. We didn't think it needed to be done this way.

We knew that there was another means that he could use to get it.

Q Why were you opposed to rent supplement, sir? Why did he have to use another means? A I didn't say we were opposed to rent supplement.

[L-59] * * *

Q You say that you thought that the program was county-wide. How did you find that out? A The resolution that Mr. Henderson obtained and showed us that he asked us to pass would indicate it was county-wide and that is all we had.

Q Did you talk to FHA officials about it? A We did discuss it with FHA officials. Someone in the office did. They determined that there were other programs that they could operate under. That he did not have to have a resolution and they would be county-wide, I suppose, but he did not have to have a county resolution for this purpose.

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District Court Proceedings of September 1, 1971

[L-63] * * *

Cross Examination

By Mr. Little:

[L-72] * * *

Q Coming down to what makes companies locate where they do, sir. Let's talk about schools again. You have had a lot of practical experience, Mr. Beck, in your many years with the county. Do you think there is any advantage to the county in trying to sell a client to locate a plant there if they can say in specific their schools that they have a substantially all-white system? Do you think that would have any appeal for industries coming in as opposed to the City where they have a substantial black system? A Well, you asked me that question and, Your Honor, I don't believe I have had an industrial contact that has specifically asked me whether our schools were all-white or all-black. So I don't think—

[L-73-4] The Court: Do you have an opinion on it?

The Witness: In this day and time I don't think the industries inquire about that.

By Mr. Little:

Q Then your answer, Mr. Beck, is that, am I correct in saying that you don't think it would make any difference to an industry coming in as to whether the composition was practically all white or practically all black in a system, is that your answer? A My answer is I don't think they have asked that question.

The Court: That is not the question.

Mr. Little: That is not the question.

The Witness: All right. No, I don't believe it does.

[L-76] * * *

Q On the formation of the Richmond Regional Planning Commission in 1957, why do you think the Board of Supervisors of Henrico deemed it to be in the best interest of the county to join that organization? A 1957, did you say?

Q Yes, sir. A At that time—there was effort being made by the community leaders and the supervisors generally, to try to build up a spirit of cooperation and working together. They felt that this was a positive [L-77] step towards more cooperative effort among the three jurisdictions.

Q Is it not fair to say that they felt there were some regional plans that could best be handled on a regional basis, that is region as applied to Richmond, Henrico and Chesterfield? A Indeed there are regional problems.

Q Referring to Henrico County Exhibit Number 1. In that there is a reference to the PAS Report, P-A-S. Are you familiar with that report, sir? A That stands for the Public Administration Service Report, sir.

Mr. Little: May I approach the witness?

The Court: Yes.

By Mr. Little:

Q Do you have a copy with you? A No, sir. This is not all of it, sir.

Q No, sir. I realize that.

To save time, I think, Mr. Beck, the evidence shows that

this was—well, suppose you tell the Court who had this report prepared? A The Regional Planning Commission at that time employed the Public Administration Service to make this report, a plan of government for the Richmond region, [L-78] a survey report.

Q Who paid for that report, actually? Didn't all three of the political subdivisions, Richmond, Henrico, and Chesterfield? A We all participated in some fashion, yes.

Q Now, is this not the report that made three basic recommendations to all three jurisdictions? One, that Richmond and Henrico merge, that is the first recommendation, wasn't it? A That was.

Q The first principal one? A That was a recommendation.

Q Secondly, that Chesterfield change its form of government from its present, is that correct? A That was one of the recommendations.

Q And third, that there be much more cooperative regional planning between the two entities that would exist after the implementation of the first two recommendations. Is that a fair summation of the basic recommendations of that report? A Your third one, I think it is in there someplace, but as I recall, that wasn't exactly the third one.

Q Well, they did recommend a greater [L-79] cooperation in the area of planning, did they not? A They recommended a more regional planning, yes, general overall planning.

Q Would you turn to page four, or chapter four, page two, sir?

[L-80] * * *

Q Would you read the first paragraph under "Henrico —Richmond Governmental Consolidation?" Would you read that paragraph, please, sir, down through number one under that? A "Step one of the plan consists in consolidating the governments of Henrico County and the City of Richmond. There are a number of compelling reasons why these two well-managed jurisdictions should combine their resources:"

Q What was the first reason given? A "One, they have a common heritage, common interests, and the same basic economy."

Q Number seven was what, then? A "The boundary line between them is so [L-81] irregular and complex that it often confuses even veteran service personnel of both jurisdictions."

Q All right.

Would you go back to the foreword in the book, sir, and read the third paragraph beginning with "The report of." A "The report avoids any recommendations for 'super government.' It suggests, rather, a moderate consolidation and expanded cooperation and coordination among local governments of the area. These measures are proposed with a view to keeping government as close to the people as possible in the face of urban expansion and marked independence of adjacent jurisdictions."

Q Wait a minute. "Marked" what? A "Interdependence."

Q Interdependence? A "Of adjacent jurisdictions."

Q All right, sir.

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Now, you mentioned, sir, I think in some of your testimony yesterday, I got the impression that you felt that the annexation suit against Henrico, and probably quite truly, did affect cooperation between Richmond and Henrico County.

[L-82] Were you implying that prior to that annexation suit that there was good cooperation between Richmond and Henrico and Chesterfield? A I would speak for Henrico. There was a period in the early '50's, and this report is one of the things that comes out of it, of an attempt to work cooperatively and try to work towards better mutual understanding and cooperation in ways that we could, in practical ways we could do it.

Q Would you turn to page two, chapter two, page six, and read—I am going to ask you to read a few statements in this report about the status of cooperation.

This report was dated when, excuse me, Mr. Beck. I didn't bring that out. A The transmittal of January 16, 1959.

Q Well, in advance of the annexation suit, was it not? A Somewhat in advance.

Q Somewhat. All right.

Then read these, if you will, for me, sir, beginning on chapter two, page six, beginning with the sentence "Joint meetings of any combination—" at the top of the page. Do you see that? [L-83] A Chapter two, page six?

Mr. Little: May I approach the witness?

The Court: Yes.

The Witness: "Joint meetings of any combination of the three governing bodies are rare, and there have been a number of instances of failure in efforts to work out mutually agreeable solutions to regional problems."

By Mr. Little:

Q Then would you skip over to chapter three, page one, and read the last sentence on that page, sir?

Read the last sentence on the page, chapter three, page one. A "Personality factors affect the success of such endeavors to such a degree that in the region, as well as elsewhere, cooperation alone has seldom proved dependable.

Q Now, would you go over to the next page, sir, and read the next to the last paragraph on that page, sir, again under the heading of "Cooperation." A "Cooperation among the governmental officials—"

Q The next to the last paragraph, sir, beginning with "Experience in the region." [L-84] A "Experience in the region has show, however, that frequently cooperation has bogged down at the executive or governing body level and has not proved a dependable means of solving major regional problems."

Q Then would you go to the chapter four, page one, sir, and read just the first two sentences there under "Outline of the plan," that starts there. A "Orderly development of the Richmond region and the capitol area through effective government is dependent on maximum cooperation and coordination. Experience has shown, however, that these essential ingredients cannot be depended upon alone to accomplish a task so complex, and that more comprehensive action, based upon a firm legal foundation, is necessary."

Q All right, sir.

Do you recall that report? Perhaps you just read this for me, sir. There was a statement about the advisability of a unified management for all of the schools in the three

jurisdictions. Turn to chapter two, page 25 if you will please, sir.

Do you see the paragraph, chapter two, page 25, beginning with "Each school operation going [L-85] its separate way?" Would you read that? A "With each school operation going its separate way, optimum efficiency in management and best planning location, and utilization of expensive school plants are difficult, if not impossible of achievement."

Q And the next sentence, please, sir. A "Whatever may be the outcome of the current controversy over public education in Virginia, it does not seem likely that it will result in the scrapping of the $60 million school plant that now exists in the region, or in the discontinuance of its expansion and its need for unified management."

* * *

Q All right, sir.

Now, of course, none of those three recommendations have become realities in that report, have they, Mr. Beck? Take them one-by-one. There hasn't been any merger of Richmond and Henrico? A No, sir.

Q Chesterfield hasn't changed its form of government since 1959, has it? A I don't believe it has.

[L-91] Q All right, sir. That is fine.

Mr. Beck, you mentioned that the county has made, has had lots of studies made in many different areas, didn't you? A We have had many consultants work for us on different subjects, yes, sir.

Q Would you explain to the Court who paid for and who had a study made by the Space Utilization Associates? A Yes, sir. Henrico.

Henrico and Chesterfield joined together and engaged this firm to do some work.

Q Right, sir.

I am referring to Richmond School Board Exhibit Number 47.

* * *

[L-92] Q May I see the date of yours, sir?

Yours is dated June 12, sir. Would you mind reading from mine dated June 1?

The Court: Why don't we read from the exhibit?

Mr. Little: That is the exhibit, June 1st.

The Court: All right.

The Witness: That is not the official report that the Board accepted.

The Court: That is the exhibit. Now, you do as counsel asked you, Mr. Beck.

Now, be a little more specific, Mr. Little.

By Mr. Little:

Q Would you go to the front page of that report and show to whom it was addressed and the date? A This is dated June 1st, 1967 to the Boards of Supervisors of Chesterfield and Henrico Counties, Virginia.

Q All right, sir. That was the date of June 1st, right, sir?

Would you turn to chapter two, page seven and read what the consultants said about community [L-93] of interest between the three jurisdictions?

This report was paid for, by the way, solely by Henrico and Chesterfield, was it not? A Yes, sir.

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Q Richmond didn't have anything to do with this report, did they? A I don't believe they did.

Q All right, sir.

Would you mind reading on chapter two, page seven, the paragraph beginning right under "Place of Work," is the heading and it says "These employment commuting patterns." Would you read that paragraph, please? A "These employment commuting patterns have been used as evidence of a community of interest between Richmond and the surrounding counties. There is no doubt that the three jurisdictions are mutually dependent. Richmond feels that it provides the major source of employment for both Chesterfield and Henrico and the counties' residents have pointed out, with some justification, that their labor force keeps Richmond businesses in business."

Q Right, sir.

Were not the Board of Supervisors [L-94] admonished by this report that they could not ignore the problems of the central city? And I refer you to chapter one, page six, paragraph six on that page. A "The State and the adjoining counties cannot ignore the problems of the central city because of its importance to the economic vitality of the region and because of the fact that it is the State capital."

Q Then would you go to chapter four, page one and read under "Objectives" the first paragraph beginning with "Reasonable men" and then that first paragraph under it, sir? A "Reasonable men could support most of the following values:

"One, the central city is an essential element of the region and the major place of employment, the center of commerce and the State capital and consequently its problems

affect the entire region. The other jurisdictions cannot dictate the affairs of the central city, nor can they refuse to cooperate in the solution of its problems."

Q Now, turn right over to the next page. I think you will see there "Conclusion about the right of self-determination in the light of regional problems." Would you read paragraph nine from page four or chapter [L-95] four, page two? A "The principle of self-determination must be preserved; however, such determination must be reconciled to the need to participate in the solution of regional problems which may, in turn, require some loss of complete control of traditionally 'local' functions."

Q I believe that is the same consultant that advised both Boards of Supervisors and warned them that the failure to cooperate could result in loss of federal funds or federal intervention, or State intervention, did they not? Look at chapter 1, page six. A Number four?

Q No, sir.

Yes, number four, I beg your pardon. That's right. A "Failure on the part of local officials to cooperate in regional programs will result in loss of federal funds and probable intervention by the State."

Q Right, sir.

Now, in this same report, Mr. Beck, did not these consultants point out the great socio-economic disparities between the city and the counties?

[L-96] I mean, I have the reference if you would like to do it, but I am trying to shorten this a little bit.

They did go into the racial composition of the City and the racial composition of the county and the differences in the socio-economic area, did they not?

* * *

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Q Well, sir, turn to chapter three, page two. The title is "Social and Economic Disparities."

Does that refresh your recollection? It talks about outward movement of the people.

Well, suppose you read that first paragraph, sir. [L-97] A "The outward movement of people has been from the relatively higher income, white segment of the population. This has resulted in their being a disproportionate number of Negroes in Richmond. As the percentage of Negroes exceeds national averages another form of segregation is created and must be alleviated. The concentration of the disadvantaged and the economically deprived in a limited area and in intolerable housing prevents their rising out of such conditions. The dense concentration of many low-income, poorly educated groups in decrepit housing multiplies the costs of government services."

Q Right, sir. A It does talk about that.

Q Right.

And then, didn't the experts say that this existence of a great disparity in socioeconomic differences made cooperation more difficult?

Look at chapter three, page two, the same page. I beg your pardon, sir. I refer to—you can strike that.

But did not these experts say that education was the most effective tool in easing these disparities?

[L-98] Look at chapter four, page 12. A "Education is the most powerful tool available in reducing the social and economic disparities between our citizens."

Q All right, sir. Fine.

Go on down and read that last sentence, if you will, in that same paragraph. A "Such a massive effort is beyond the limitations of one school system and, because of the

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scope and regional importance, the three jurisdictions and the State government must cooperate in the planning and development of the educational programs, while retaining operational and administrative controls locally."

Q Right, sir.

Did these experts not also point out that sometimes jurisdictional boundaries are pretty artificial when you get down to regional problems?

You recall that, don't you? A I have heard that said, yes, sir.

Q All right. A I am sure.

Q And what did these experts say was the ideal solution for all of these regional problems? Do you recall that?

[L-99] I am talking about the June 1st edition, now, sir, which is the exhibit.

Let's look at the page. A My recollection—

Q If you would turn to chapter five, page five, and I believe it is the second paragraph on that page, sir. "It is the consultants' opinion."

[L-100] * * *

A "It is the consultants' opinion that consolidation would be 'idealized' solution for the Richmond region, but that, without a change in attitudes or a crisis of major proportions, it would not receive the necessary voter approval."

Q All right.

And then did they not imply that—well, read the next paragraph. Not the next one but the one that starts out "The argument." A "The argument, then, must turn on using consolidation to solve the problems of the central

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city. [L-101] Although perhaps shortsighted in terms of overall regional goals, it is unlikely that suburbanites would feel compelled to vote their county governments out of existence to restore a racial balance or broaden the tax base or development area of the central city."

Redirect Examination

By Mr. Byrne:

Q Mr. Beck, in referring to Richmond School Board Exhibit Number 46, which was a City Exhibit exhibited to you by Mr. Lucas—may I approach the witness?

The Court: Yes, indeed.

By Mr. Byrne:

Q Sir, I believe Mr. Lucas asked you if that showed a designation of white and Negro as to those facilities on that plate? A Yes, sir. It has on that plate and in this case there were some exhibits that the City attempted to enter that showed race as to percentages [L-102] and so on. I know the Court struck out all of that. I don't know as far as the individual plates what they may have on them, but the Court made and confined this thing not to a racial question, but annexation.

Q In fact, Richmond sought to put the racial question in annexation and the Court excluded it, that is right? A Yes, sir.

Q Did Henrico have anything to do with the preparation of that exhibit? A No, sir.

[L-104] * * *

Q Now, Mr. Beck, after the PAS Report was received in 1959, the Board of Supervisors took action to submit

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the question of merger to the people, which has already been discussed here, is that right? A Yes, sir.

Q Now, with reference to the Space Utilization Associates, Incorporated, which is Richmond School Board Exhibit 47, the report that Mr. Little had you testify from, sir, was that the original draft of that report or the preliminary draft? A The date of transmittal, according to this, is June 1st of '67. That was not the report as it was finally received and was considered strictly a preliminary work copy that they had sent us.

[L-105] Q All right, sir.

Do you have the final report? A I do, sir.

Q And what is the date on that? A June 12, 1967.

Q All right, sir.

We would introduce that as County Exhibit Number—what is my next number, Mr. Clerk?

The Clerk: 25.

Mr. Byrne: Plaintiffs' Exhibit Number 25.

If it please the Court, counsel would like to have an opportunity to compare those two with Mr. Beck to see if there is anything that we would desire to clear up that was read into that report, any differences.

[L-107] * * *

Q Mr. Beck, directing your attention to Richmond School Board Exhibit Number 47, Henrico Exhibit Number 25, which is the SUA Report referred to here, why was SUA, Incorporated employed in this instance? A Well, at the time the Hahn Commission was studying metropolitan problems and the two counties felt that they needed some help in preparing things that might be advantageous to them in presenting to the Hahn Commission. We en-

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gaged these people to help us in a preparation of general information in drafting up information that we could present that would favorably present the counties' side and story with regard to these matters that were coming up. That is basically it.

Q Now, what was the attitude of Richmond when it was disclosed that the counties had employed such consultant? A Well, there was considerable resentment. They tried every way they could to discredit them.

I remember there was an unfortunate event directly. The consultants were from out-of-State and they had done work in Virginia. They hadn't gotten [L-108] their registration complete with the State Corporation Commission. I dare say many consultants have this type of thing. They went and looked that up and tried to discredit them for being sort of fly-by-night. They also had editorials about the fact that they called down to the University of Georgia, I believe it was, where one of the people was supposed to be on the team was from down there. They got some information to indicate or try to discredit any arrangement or any possibilities of his being in it at the time.

All these arrangements had been worked out. It was all done rather hurriedly. The consultants haven't at the moment completed their arrangement with this individual. So there was all kinds of expressions of resentment and attempts to discredit any capability.

[L-109] * * *

Q Now, Mr. Beck, referring to Richmond School Board Exhibit Number 47. Do you have that?

May I see if he has that?

The Court: Yes, indeed.

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By Mr. Byrne:

Q Now, that is the report dated June 1st, 1967. Was that a preliminary working report? A This was. There had been others besides this, too.

Q And did they bring that in and then have a consultation with the officials of the two counties? A There were numbers of consultations on this preliminary report and others, yes.

Q Now, sir, referring to Henrico County Exhibit Number 25.

May I approach the witness, Judge?

The Court: Yes, indeed.

[L-110] By Mr. Byrne:

Q Was that the final report received? A This is the report that was accepted, yes, sir.

Q Now, during this period, Mr. Beck, in order to get ready for your presentation to the Hahn Commission, was there a short period of time involved? A It was. These people, and I guess one of the reasons they were selected, is when we tried to check around for someone to help us, they were agreeable to doing it on a very short crash program basis.

We talked with Fairfax County where they had done some work for them of a different nature entirely. In fact, they were really space utilization is their type of work.

They said they had met their deadlines. Didn't know if they knew anything about this type of business, but they would get the report to us hurriedly. That is what we wanted.

Q Now, turn to the chapter one, page six in the Hen-

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rico County Exhibit Number 25. A Chapter One, page six?

Q Does that contain the recommendations, the final recommendations of the SUA, Incorporated? [L-111] A Yes, sir.

Q Would you read the first paragraph, sir? A Means of stimulating cooperation among local officials must be developed in the form of new alternatives. However, the consultant has investigated thoroughly and after serious evaluation has discarded the following as having doubtful application under current conditions to the Richmond-Henrico-Chesterfield region: Voluntary metropolitan counsel; consolidation; city-county separation; the urban county, federation; and limited purpose, metropolitan special districts."

Q All right, sir. Would you read paragraph 2-A. A "Recommendations. The recommendations of the consultant are: Recommend to the metropolitan areas study commission that the commission recommend:

"A, legislation enabling local jurisdictions to adopt alternative forms of governmental structures that best fit their social, economic and political environment. The alternatives should be codified and broadly stated."

Q Now, sir, would you read under "Recommendation", paragraph five? A "Secure legislative approval for and [L-112] establish a multi-purpose district for the region to handle such functions as: Regional planning; operation and expansion of the Richmond and Henrico water, sewer and gas utilities; study and possible operation of transportation and transportation terminals; comprehensive regional planning for open space, regional parks and land

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uses; study and operation of refuse collection and disposal; air pollution control; and industrial development. The legislation should permit the multi-district to expand functions and boundaries as the needs of the urbanizing area change."

Q Now, sir, that was a similar recommendation as to the one in the Hahn Report, the multi-district service? A I think it was.

Q Or multi-service district? A Very similar.

Q Now, turn to chapter five, page eleven. Let me ask you this question after you get past the recommendations, the balance of the report is a discussion of the recommendations, is that true? After you get past the recommendations of the consultants, right there, Mr. Beck, the balance of the report? A Yes.

[L-113] Q Is there a general discussion? A Background discussion on various points.

Q All right, sir.

Would you turn to chapter five, page 12, or page 11, excuse me.

May I approach the witness, Judge?

Would you refer, sir, to the next one on education?

Read the first paragraph. A "Although public education through high schools should remain the responsibility of the individual jurisdiction, there are areas of cooperation that would serve to strengthen the educational programs. Of particular interest should be providing specialized programs requiring specialized teachers, facilities and equipment. A regional vocational educational facility provides an excellent example of this. Individual school systems cannot provide the special schools and facilities re-

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quired to anticipate and train students in the rapidly changing technologies. Acting jointly, the three jurisdictions could provide an excellent teaching facility for vocational students of the entire area while maintaining the close contact with employers to anticipate their needs and to develop appropriate [L-114] curricula. They can also pull resources for the special education programs required for the handicapped, mentally retarded and similar groups."

Q Now, sir, turn to page 12, will you, please, page 12 in that chapter.

Would you read the last part of the last sentence, sir? A "The three jurisdictions and the State government must cooperate in the planning and development of the educational programs, while retaining operational and administrative controls locally."

Q Now, Mr. Beck, would you tell the Court what the attitude of the City of Richmond has been, based on your experience, on occasions when the County has sought to work out a joint program of cooperation with them? A Well, the attitude that I have experienced in a lot of my discussions and negotiations with them, I say, generally, some of our utilization discussions, they have sat down and said what they would do. They have been pretty difficult, I guess you would describe it as, pretty overbearing and pretty well dictating the terms in many of these discussions we have had. They left no room, certainly in the beginning of our [L-115] discussions, for very much encouragement that we could cooperate with them.

They have been very difficult in trying to work out some of our negotiations, particularly in the period, some of the periods during the '50's. We had dealings with the Director of Public Works. We went up there. They had their

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tables and contracts and so on all worked out on sort of a take it or leave it basis, I guess you would say.

The Court: You accommodated them, I take it?

The Witness: Well, we didn't accommodate them, no, sir.

The Court: You left it?

The Witness: We did.

The Court: That is what I mean. You left it.

The Witness: We left those and because of the continued pressure that was put on us from various means, newspapers, they would put pressure on elected officials, we would continue to go back and talk with them. Sometimes we would get a breakthrough. A lot of times we didn't.

[L-116] By Mr. Byrne:

Q Mr. Beck, I refer you to Henrico County Exhibit Number 25 under "Recommendations" and ask you to read paragraph one of the recommendation.

A This is the SUA Report again. The recommendations of the consultant are, "eliminate annexation except to erase 'pockets' and unrealistic service boundaries and only then after referendum within the areas to be annexed. Annexation is not an alternative that promises solutions to the Richmond area regional problems."

Q Since 1959, Mr. Beck, how many times has annexation, and I am speaking not in the cartoon sense, but how many times has annexation actually been used against the County of Henrico? A Well, there has been one annexation case filed that went to Court and was tried and the City won. They weren't satisfied and they rejected it.

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The second time they started one and it hasn't been matured.

Q Well, you are not telling the Court that the suit has been instituted, but the ordinance of annexation has been adopted? A It has been started, yes, sir.

[L-118] * * *

Cross Examination

By Mr. Gray:

Q Do you have a copy of the PAS Report, Mr. Beck? A I am sorry, I do not, sir, not with me.

Mr. Gray: Could I approach the witness?

The Court: Yes, sir.

By Mr. Gray:

Q You have been asked to read some little excerpts, Mr. Beck. I am going to ask you to fill in a little.

Let's look at chapter 12, page five. I mean chapter four.

The Court: Which is it, now?

Mr. Gray: Well, it is chapter 12—chapter four, I am sorry, Roman Numeral four. Roman Numeral four, page three.

I want you to read all of the heading entitled "Chesterfield County Governmental Improvement."

The Witness: The heading is "Chesterfield County Governmental Improvement.

"There are not comparably compelling reasons why Chesterfield County should be as closely allied as Henrico with the central city. It is true [L-119] that the residents of the City and the county have a common heritage and many common interests, but Chesterfield County:

"One, is relatively independent as regards water supply, although it depends to a limited extent on Colonial Heights and Petersburg and to a lesser degree on Richmond (it plans on using Appomattox River water in the future);

"Two, is not generally in the watershed which can be served readily by Richmond's new sewage plant (although a portion of it is in that service area);

"Three, has a new administration building and other Court and related facilities, valued at about $1 million, located in the county some distance from the City;

"Four, has a boundary line with Richmond which is generally clearly defined by the James River and the Atlantic Coastline Railroad;

"Five, has a well-balanced tax base, with good industrial core;

"Six, does not maintain any of its own thoroughfares;

"Seven, has steadfastly followed an independent course of development;

[L-120] "Eight, provides minimum service at low cost, in keeping with the apparent preferences of its citizens; and

"Nine, has strong ties with the Tri-City area to the south as well as with Henrico County and Richmond to the north."

Q All right, sir.

I want you to look now at Roman Numeral II, page 23, discussing "School Plant of Chesterfield County." And I believe this report is dated 1959, is it not? A January 16, 1959.

Q All right.

As of that time, what does it say in the second paragraph under "School Plant" with respect to the county's school facilities? A "Shortages of physical plant are causing both of the counties to have fairly extensive 'shift' in opera-

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tions in their school buildings, and Chesterfield County is using a number of rented facilities. Richmond is 'double-shifting' only in the beginning grades."

Q Right.

Now, turn over to page 33 and again read the fourth paragraph on that page, if you will, beginning [L-121] with "Chesterfield County."

A "Chesterfield County still has major deficiencies in its physical facilities, with overly intensive use of its school plants."

Q All right, sir. A "A prospect for a number of years to come and potential health hazard in the inadequacies of sewage collection and disposal systems."

Q You were asked about the possibility of, I believe Mr. Lucas asked you, about the possibility of some contractual arrangements. I ask you to look at Roman Numeral III, page three and read what these experts have to say with respect to contracts.

Read the paragraph starting off with the word "Contracts." A "Contracts are often difficult to negotiate. One jurisdiction may not wish to assist in defraying capital charges, although it finds service or rental fees acceptable. A jurisdiction may be relieved of major costs if it can procure necessary services from someone else on a fee basis. Such arrangements may avoid duplications of facilities or services. Contract negotiations, however, are frequently initiated with a selfish purpose and, as a result, may end in failure."

[L-122] * * *

Q Mr. Beck, turning back now, and we will go back to the matter which I had you read first off of Roman Num-

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beral IV at page three. The first comment which was made by these experts as to why there were not comparably compelling reasons why Chesterfield County should be closely allied with the central city, was that it was relatively independent in regards to its water supply, though it did depend to some extent on Colonial Heights and Petersburg.

Do you, sir, know whether that situation has changed and Chesterfield now has a completely independent water supply? A To my knowledge and understanding it does have its own water supply.

Q The second reason they gave was that it was not generally in the watershed, that could be served readily by Richmond's new sewage treatment plant, but said a portion of it was in that service area. Do you [L-123] know whether that portion is now a part of the City of Richmond? A I believe it is. Yes, I believe it is.

Q The third comment was that the county in 1959 had completed a new administrative building and other Court buildings valued at about a million dollars located in the county some distance from the City.

Do you of your own knowledge know whether or not that plant has been very greatly enlarged since 1959? A It has. It has been. Currently it is.

Q Is it still located at the same place? A Yes, sir.

Q Same distance from the center of the City but a little nearer the limits? A I believe it is, sir.

Q And except for the changes which were made in the boundary line by the recent annexation, Chesterfield still has a substantial portion of its boundary defined by the James River, has it not? A Well, yes. There is one part that is very definitely the James River.

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[L-124] * * *

Q The fifth comment of these experts was that Chesterfield had a well-balanced tax base of a good industrial core.

Do you know, Mr. Beck, whether since 1959 Chesterfield County has had substantial development, increases in its industrial tax base? A I am sorry to say that I am afraid they have had some of them we would liked to have worked with.

Q Do you know whether it is still true that Chesterfield does not maintain their own thoroughfares? A It is not the State road system, that is correct.

Q Do you know whether it has continued to steadfastly maintain— [L-125] A Let me correct that. When I say it is not in the State, I mean it has, operates through the State road system in the primary and through the secondary.

Q It does not follow the course of Henrico County— A That is correct.

Q —in handling its own roads.

Would you like to—you took the punch line away from me, Mr. Beck, by interrupting me.

Has Chesterfield continued to steadfastly maintain its independent course of development? Do you know? A It is my opinion that they have operated rather independent of trying to work out some of these cooperative contractual arrangements, yes.

[L-126] * * *

Q Mr. Beck, you read to the Court from Roman Number III, page three, the statement to the effect that contracts are often difficult to negotiate. Have you, as the executive secretary or county manager, I believe, I am

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sorry, sir, county manager of Henrico County, had any experience with the attempts to negotiate contracts with the City of Richmond? A Yes, sir, I have.

[L-127] * * *

Q Mr. Beck, do you agree with the statement made by the consultants that contracts are often difficult to negotiate? A They are indeed very difficult.

Q All right, sir.

Now, tell His Honor what it was you had your heart set on?

The Court: Do you have enough water, Mr. Beck?

The Witness: We had attempts to start it in the early part of the '50's, about '53 or so, '52 or '53, soon after I came with the county, to try to work out an agreement with the City of Richmond on sewage disposal through their system. They contacted us and told us that they would like to talk to us about it rather than going and have the county build the system. I don't know how many years we worked with them. They bring in cables and things that they show us and say, this is the way it is. They went on for any number of years, and we finally just felt like giving up. I said it was one of the most difficult [L-128] tasks in my life. Sometimes I felt like it was one of the hardest jobs I ever had of trying to work on these negotiations.

We have since had other negotiations with them on utilities for water. Some of those have not been quite as difficult, but they have all been most difficult, time-consuming, and I just felt like it was an impossibility at times.

By Mr. Gray:

Q Well, Mr. Beck, if you had that much difficulty trying to deal on the question of utilities, would you contem-

ıte that in view of the fact that people generally hold eir children in higher regard than anything else in their es, do you think you would have an even more difficult ıe trying to negotiate about school children? A I ould imagine it would be most difficult, just practically an possibility.

Q Did you have any difficulty negotiating or dealing th the City about a jail farm? A Yes, sir.

Q How did that end up? A Well, the City called us come up and meet with them and told us that they ould like to work [L-129] with us maybe on a joint jail oject. They then went in and started talking about where ey would like to locate it. They wanted to locate it in enrico County in a generally residential section of the unty. They asked us did we think we would go along with nd will we work with them and so on.

They were told that very definitely by the members of the ard of Supervisors that they just couldn't possibly con- er this, this was an incompatibility with the area and that ey couldn't possibly consider locating it there. They didn't ister objections to talking with them about any joint ilities, but they did very definitely, as far as where it was ated. And I think the final words of one of the Council- n, or the City Manager, was "Well, we will locate it re anyhow." And as a result, it ended up that it came, came a litigation. It was taken to Court. Before it was over there was lots of bitterness, of course, and finally county did sustain their position in that case.

130] * * *

Q Would you read, sir, under the heading "Future gional Annexations," Roman III, page seven of the PAS port.

I ask you to read the first sentence of that topic. A "In spite of the fact that annexation is often used for municipal territorial expansion throughout the State and the nation and has been used in the region, it is suggested that its use be curtailed in the Richmond region in the future."

Q All right, sir.

Now, turn over to the page ten, while I am here, and read, if you will, the second full paragraph beginning, Roman Number III, page ten, under the heading "Advantage and Disadvantages," the second [L-131] full paragraph on that page. A "Consolidation also implies the disadvantages that are thought to be associated with largeness in units of government. Increased general government expenses may be expected to raise the per capita costs of one or the other of the jurisdictional segments. Close day-to-day relationships between the government and the public are more difficult, though not impossible, to maintain; and informal, yet highly productive, work procedures and relationships may be lost."

Q Now, Mr. Beck, turning back to the statement that I had you read first with respect to curtailment of annexation in the future, use of annexation in the future, you were reading from the PAS Report. Was there a similar recommendation in the SUA Report which you have read? A Yes, there was.

Q And was there a similar recommendation in the Hahn Report which was referred to earlier in this case? A Yes, there was general recommendations there, too.

Q So all three of these have referred to [L-132] the tion.

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Has Richmond complied with those recommendations in any sense? A Well, they just introduced an ordinance in the past year.

Q The short answer is, no, isn't it, Mr. Beck? A No.

Q Now, sir, I want you to tell me with respect to this last thing which I had you read about consolidation, also implying the increases in cost which are generally associated with larger governments.

Do you agree with the thought that larger governments become more expensive governments? A That is generally thought to be true.

Q Do you think it is true? A I think it is true.

Q Do they become farther removed from the people as they become larger? A I think they do.

Q Do they generally become less efficient as they become larger? A Many inefficiencies come into it, yes.

[L-133] Q Do you think that the consolidation of Henrico County and Richmond would increase the efficiency and economy of government in the two jurisdictions? A I don't believe it would, sir.

[L-139] * * *

Recross Examination

By Mr. Little:

Q Mr. Beck, I believe you described our Exhibit 47 s a preliminary working paper. I don't mean to put words in your mouth. How did you describe it? A It was your 47, Mr. Little?

Q That is the SUA Report dated June 1st. A You mean the SUA Report?

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[L-140] Q Yes, sir. SUA. A This was a preliminary document that they brought down, as they had brought down any number of others and discussed them with us. And there are parts of things that we did not believe truly presented the facts as we saw them.

Q All right, sir.

Do you have a copy of this document in front of you. It is in this bound volume, is it not? A It is.

Q Would you turn to the cover letter in the document dated June 1st, '67 addressed, I think you already indicated it was addressed to the Board of Supervisors.

Now, that cover letter is signed, is it not, by the president of this organization? A Yes, it is, sir.

Q Would you read the first paragraph? A "It is my pleasure to submit the following report. We are grateful for the opportunity to conduct this study and hope that our findings and conclusions will be valuable to you in seeking answers to the difficult problems facing public officials in [L-141] your area and in similar situations throughout the country. We are particularly grateful to you for the freedom of action and inquiry you have afforded us."

Q Fine, sir.

Now, look through the cover letter, the balance of it, and see if you see anything about it being preliminary in nature or working papers or anything of that description.

Just in that cover letter, would you look through there and see if there is any reference to it being a working drawing, so to speak? A I can answer, no, but that is not the answer.

Q That is all I wanted, sir.

Now, let's come to the June 12 edition of the report.

Do you have that before you? A Yes, sir.

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Q Would you turn to the chapter four, page three, when they deal with racial composition of the community. Would you read the paragraph beginning "There is reason to believe?" A "And there is reason to believe that life in the Richmond metropolitan area is becoming [L-142] more segregated with time, rather than less segregated. By that we mean non-white populations are continuing to be concentrated in the City of Richmond, and the small non-white percentages in Henrico and Chesterfield Counties are likely to become even smaller with time as the white population in these counties continues to expand. At the present time there is little reason to believe that the State of Virginia or the U. S. Government is likely to adopt legislation, such as 'Fair Housing Act', which would significantly alter this pattern of concentrating Negro housing in central cities and white housing in suburbs."

[L-143] * * *

Q Then would you change over to page nine, sir, in that same chapter, the last paragraph on the page, sir. Page nine. I mean the subject matter dealing in part with education. The last paragraph on page nine, sir. A Dealing with education?

Q Well, just read that last paragraph, sir. It might touch on education. A "The familism of suburbs can be expected to lead to a greater concern with children, with their education, and consequently, with the quality of public schools. Throughout the nation, suburban schools in large metropolitan areas are generally superior to city schools in most indices of educational quality. This, too, is an important barrier to city-suburban consolidation."

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[L-147] * * *

REVELLE M. YOUNG

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Byrne:

Q Mr. Young, would you state your full name and occupation, please? A Revelle M. Young, chief underwriter, presently chief underwriter with HUD with FHA.

[L-150] * * *

Q Now, Mr. Young, is the 221-D-3 program being phased out by the government? A The 221-D-3, no, not the rent supplement.

Q Not the rent supplement? A No, sir.

Q All right, sir.

Now, Mr. Young, will you briefly state what is necessary for an application under the 221-D-3 rent supplement? [L-151] A What we call a package that is submitted?

Q Yes, sir. A Well, there has to be an application submitted and attached to the application has to be certain exhibits.

Q Is one of those exhibits local approval or evidence of a workable program in the community? A Yes, sir.

Q Prior to December or in December of 1970, if the local area where the rent supplement program or rent supplement application was to be located, if that area did not have a workable program, was it necessary to have a

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resolution passed by the local governing body? A Yes, sir.

Q Did FHA require that resolution to apply to the county—to the locality as a whole? A Yes, sir.

Q And when I say locality, I am speaking of the government, either county or city?

Q Has that been changed, sir? A There has been a waiver.

Q And when was that changed? A We had a specific ruling on that in [L-152] March of this year.

Q Do you have a copy of that ruling with you? A Yes, sir, I do.

* * *

Q All right, sir.

Now, Mr. Young, would you read for the Court the directive from Mr. Cunningham to Mr. Stansberry? A The whole report?

Q Yes. A All right.

[L-153] The subject is the rent supplement program, local official approval.

"This is in reply to your captioned memorandum of February 19, 1971 concerning the acceptability of resolution for participation in the rent supplement program adopted by governing bodies that limit the number of units and/or restrict the approval to certain designated sites. The resolution adopted by the City Council for Harrisonburg, Virginia, copy of which was attached to your memorandum, is acceptable. Local governing bodies may restrict rent supplement participation to a particular number of units or a particular site; however, wherever possible a

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non-restrictive resolution would be preferable. This will permit the future development of rent supplement projects without the necessity of obtaining an amended or new resolution.

"Attached is a copy of MF 101 dated April 3rd, 1967 with attached suggested form of resolution by a local governing body. This is evidently the model form for certification used by the City Council of Harrisonburg." Signed by Robert Cunningham.

[L-155] * * * *

Q All right, sir.

Do you have any 236 projects in Henrico County? A Yes, sir.

[L-157] * * *

Q All right, sir.

Do you have any applications pending that have been approved but not funded for 236 housing in Henrico County? A We have some projects that have had site [L-158] inspection made but they have not been actually approved yet. The site has been approved but as far as going through all the feasibility, they have not.

[L-167] * * *

WILLIAM F. DEWHIRST

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Byrne:

Q Mr. Dewhirst, will you state your name and occupation for the record, please? A William F. Dewhirst, Director of Public Utilities, Henrico County.

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[L-171] * * *

Q Go ahead, please, Mr. Dewhirst. A Well, I will try to shorten it, sir.

Once the project is established and we are putting the line or installing the line, we notify every resident along the street that the facilities are available. They are sent a registered letter. We offer them the opportunity to connect at half of the normal connection fee, which is established by the county ordinance.

[L-172] This is done for two purposes. One is to recognize that we want to get as many people on the system as possible when it is initially installed since normally there may be some health problems involved in the initial installation.

Q Now, Mr. Dewhirst, in the event that there are some low-income people in the area and do not have the cash outlay to pay for such connections to join up to the system, has the Board adopted a policy with regard to the extension of the system to those people? A Yes, sir.

In December, 1969, the Board of Supervisors adopted an ordinance providing for the payment of connection fees on an installment basis. This was a direct result of petitions from a low-income area that we had reviewed with the people had they wanted the service. But they had indicated that they would not be able to pay the connection fees in one lump sum.

[L-181] * * *

MARSHALL JONES

was called as a witness and, having been first duly sworn, was examined and testified upon his oath as follows:

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District Court Proceedings of September 1, 1971

Direct Examination

By Mr. Gravatt:

Q State your name, please. A My name is Marshall Jones.

Q Mr. Jones, what is your occupation and [L-182] employment? A I am extension agent in Chesterfield County. I am also the unit chairman in Chesterfield.

* * *

I have graduate work at the University of Georgia and at VPI and at the U. S. Department of Agriculture, graduate school in Washington, D. C.

Q What are your duties and responsibilities as extension agent in Chesterfield County? A It is primarily to bring to the people of Chesterfield the expertise and information provided by the U. S. Department of Agriculture and the Land Grant University, which is VPI, and State University.

Q Have you, at my request, brought together certain statistical information with regard [L-183] to agriculture and forestry in Chesterfield County? A Yes, sir, I have.

Q Will you tell us what the total land area of the county is, please, sir? A The land area of Chesterfield County is 285,580 acres.

Q How much of this land is owned by the federal government? A Approximately 3,300 acres are owned by the federal government in Chesterfield County.

Q How much of the area of the county—first let me ask you, did you formulate for the purpose of this testimony a definition of an urban and built-up area? A Yes.

* * *

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[L-184] Mr. Gravatt: What definition did you use to define urban and built-up area?

The Witness: The Virginia conservation needs inventory define the urban built-up areas to include areas in the cities, villages, built-up areas of more than ten acres, industrial sites, railroad yards, cemeteries, airports and golf courses, and this type of thing.

By Mr. Gravatt:

Q Applying that standard, did you determine the number of acres of built-up urban land in Chesterfield County? A The Virginia conservation needs inventory committee made this determination. They determined that there are 40,180 acres of urban and built-up land in Chesterfield County.

Q How much land does that leave in the county for agriculture, for forestry, and other uses? A After we take out the federal land, the urban build-up, the small water areas, this leaves a total of 239,590 acres available for agriculture and other uses.

Q Can you tell us how much land is actually under cultivation or in pasture in Chesterfield? [L-185] A The Agriculture Census, the USDA Agricultural Census shows 18,626 acres in crop land, but since pasture is also a rotational crop in Chesterfield, the 5,503 acres should be included to make that a total of 24,131 in cultivation in Chesterfield County.

Q Can you tell the Court how many farms, farm units there are in the county? A The source that I went through to find this information, and I believe to the best, was the local agricultural stabilization conservation service. This is an agency of the U. S. Department of Agriculture.

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And the local office of the Chesterfield ASCS office records show 635 farms on their mailing list. All of these have allotments, or they have base acres or help participate in some of the agency programs during the past three years.

Q Can you give us an estimate of the agricultural income in the county? A Yes. The best estimate we have been able to get together of the farm products sold in 1970 were slightly over $3 million. This does not include commercial forest products.

Q How many acres of land in Chesterfield [L-186] are actually covered with woodland or forestry? A Approximately 209,532 acres or 73.6 percent of the land area of Chesterfield is in woodland.

Q Do you have information in regard to the value of timber products, pulpwood and the like produced in the county annually? A Yes. The Division of Forestry reports that Chesterfield is in the top 20 counties in the State for forest products from an income basis. The farmers, landowners, received last year stump value of $522,405 for lumber, pulpwood, and miscellaneous forestry products. These increased in value from the time—this is stump value. By cutting, sawing, delivering, this increased to $3,334,577. So this $3 million was generated from the forest products for Chesterfield County last year.

Q Can you tell us who the persons or by whom the $209,532 acres of forest land in Chesterfield is owned by? A The Virginia Division of Forestry provided me with this information that forestry ownership in Chesterfield, public ownership, this is the parks and so forth, is 8,800 acres. Industrial ownership is 44,300 acres. Farmer ownership is 49,500 acres and miscellaneous private ownership is 112,400 acres.

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Q Can you tell us whether or not there are any farms or any forests in the City of Richmond? A No, not to my knowledge.

[L-188] * * *

M. W. BURNETT

was called as a witness and, having been first duly sworn, was examined and testified upon his oath as follows:

Direct Examination

By Mr. Gray:

Q State your name, please. A I am M. W. Burnett.

Q Mr. Burnett, what is your present position? A The Executive Secretary to the Board of Supervisors of Chesterfield County.

[L-191] * * *

Q All right, Mr. Burnett. I want to ask you, before I forget to ask you, you heard Mr. Dewhirst testify a few moments ago, did you not? A Yes, sir.

Q And you heard him describe the policy which Henrico has relative to permitting credit to lower income persons for the extension of utility services to their homes. Does Chesterfield have such a policy? A Yes, we have had for years.

Q All right, sir.

Now, sir, I want you to look at Plaintiffs' Exhibit 17 which is the blue book, volume one of the Richmond-Chesterfield annexation case, and ask you to look at the plate one in that book. This is the geographical orientation of Richmond, Chesterfield and Henrico. I ask you in look-

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ing at that if you can see anything peculiar about the location of Chesterfield County? A Yes. Chesterfield County was originally bounded on the north by the James River and on the [L-192] south by the Appomattox River, making it a peninsula. At the present the county has some 445 square miles and the peculiar or peculiarity existing, I suppose, is that Chesterfield is the only city in the State that is bounded by some, the only county in the State that is bounded by some four cities.

Q It has four cities on its boundaries? A Yes, sir.

Q Now, what effect has this location on the peninsula had on the citizens of Chesterfield County? A By virtue of its location, we have been able to keep together forming a separate entity, stayed apart from the adjacent localities because we have been required to depend upon ourselves, for the most part. For example, it was not until 1928 when we had a bridge across the Appomattox River could we get to Hopewell without going through Petersburg. Both the location and the county's great heritage have made Chesterfield citizens a rather independent group of people with pride in their accomplishments and a willingness to work together for a common goal. It has been necessary many times to band together to fight annexation suits. Nothing draws the people together [L-193] more than to have to resist pressure from outside the county.

Over the course of the years there have been numerous annexation suits.

As a matter of fact, during the past 18 years, the county has spent 12½ years actually fighting annexation suits.

Q Well, from this location, Mr. Burnett, it would be theoretically possible, would it not, for Chesterfield to be subject to annexation in four different courts at the same time? A It could happen.

Q Now, sir, I want you to look at Richmond School Board Exhibit 53 which is the land use map. I believe that is the one, Mr. Burnett, that is on the easel there. In connection with that, I would like for you to look at Chesterfield Exhibit Number 9, which is the zoning map of Chesterfield County.

Could we have that please, sir?

Is this the county planning map, Mr. Burnett? A Yes. That appears to be the land use map of the county.

Q Mr. Burnett, for all of the land in [L-194] Chesterfield County that is not specifically zoned as either commercial, residential, industrial, what zoning classification does it take? A That would be agricuitural.

Q And what percentage, if you just roughly, what percentage of the county's land is agricultural, has agricultural zoning? A What percentage of the county is zoned agricultural? We have made no direct survey. I would assume that about 75 percent of it at least would be agricultural.

Q About 75 percent.

All right, sir.

In response to interrogatories which we filed in this case, it has been indicated that it is harassing and discriminatory to hold so much land in an agricultural category and require use permits for each residence that is built on such land. Can a home be built on agricultural land without getting a use permit? A Yes. As a matter of fact all the land except the small portion of land used in institution and government purposes can be used for residential purposes.

[L-195] * * *

Q Under the zoning ordinances of Chesterfield County and we have filed them, I believe, as County's Exhibit Number 7, what is the square foot requirement for a residential structure in the county? A 400 square feet is the requirement. For about 95 percent of the county or more in our A zoning, there is a requirement that you have to have 2,000 square feet.

[L-196] Q In other words, in the R-1 and R-2 zones and commercial zones, the agricultural zones and in the industrial zones the building requirement for a home is 400 square feet? A Only 400 square feet.

Q Well, that is a house 20 by 20 would satisfy that requirement? A Yes, sir.

* * *

Q I am showing you exhibit number 8. I ask you if this is the zoning map for Chesterfield County? A Yes, that is the zoning map.

Q Could you tell the Court what the color legend is that shows the RA zone? A It looks green from here.

Q So this would be almost in the middle of the map, at the top green area, and then another small green area very near to that? [L-197] A Yes.

Q And the white area which you have described as being agricultural is all of the white area shown on that map? A Yes.

Q Thank you.
That is all agricultural? A All agricultural.

Q All right, sir.

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Are those two green areas, Mr. Burnett, they are the only two areas of RA zone? A That is correct.

Q And what is the square foot requirement for a house in the RA zone? A 2000 square feet.

Q Has the RA zone operated in such a manner as to prohibit black people from locating in that area? A No, it has not. As a matter of fact, the Board of Supervisors has granted variances to black people so that they could build homes in that area.

Q Now, sir, I want you to comment on Richmond's Exhibit Number 60, which is in the black book, and is a map showing the 30-mile travel distances out of the City of Richmond.

[L-198] The Court: 30-minute.

By Mr. Gray:

Q 30-minute travel distances.

Could I have exhibit number 20, please?

Would you comment on that? A Well, this is the 30-minute travel time. We are particularly interested in the concept of 30-minute travel time particularly in connection with our thoughts as to the conflicting claims of the adjacent cities. We have prepared a 30-minute travel time map showing the times from Colonial Heights and Hopewell. As you can see they overlap considerably with those of the City of Richmond.

Q Now, on County Exhibit 20, Mr. Burnett, the yellow line is the 30-minute travel time out of the City of Richmond, is that correct? A Yes.

Q And the red line is the 30-minute travel time out of Hopewell? A That is correct.

Q And the green line out of Colonial Heights, or do I have them backwards? A The green line is out of Colonial Heights. We did not put in the line for Petersburg [L-199] since that would coincide with the Colonial Heights line except it would extend to the western part of the county to some degree.

Q Going towards Richmond it would be the same as Colonial Heights? A Yes.

Q Mr. Todd has indicated in his testimony for the purpose of this City Exhibit 60 was to show that—indicated many people in the county work in the City.

Do you have any comments on that? A Yes. I agree that people in most cases want to be close to their work. In the case particularly of lower income groups, transportation is a real problem. Generally poor people without an automobile are one or one-car families will want to live certainly within the sphere of public transportation. It is very difficult to live in the country without some sort of transportation.

Of the people actually in our county now, there are many who work in Richmond, but there is also a large percentage who work in the three cities south of Chesterfield, plus the fact that Chesterfield has a growing number of industrial agencies which afford a great number of jobs to our own citizens.

Q Do you have many employees coming into Chesterfield from Petersburg, Hopewell, Colonial Heights and other areas? A Yes. There is a substantial interchange of workers between Chesterfield and the cities to the south.

Q All right, Mr. Burnett.

When has most of the growth taken place in Chesterfield

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County? A Chesterfield really began to grow, I would say, in the early '50's.

[L-202] * * *

Q Mr. Burnett, this plate shows by gradation of color the residential subdivisions in Chesterfield County and in the City of Richmond through 1942 and 1968. I ask you does this plate bear out the fact that there was very little development [L-203] in Chesterfield County prior to 1947? A Very, very little.

Q Now, sir, turn to plate nine, if you will.

Plate nine is a line graph dealing with subdivisions in the City of Richmond and in Chesterfield County within five miles of the City limits. I ask you whether this plate also bears out the fact that there was very little residential subdivision in Chesterfield County prior to 1947? A Yes. This graph shows the area within the five-mile—within five miles of Richmond, but this growth pattern, I believe, is true all over the county.

Q So the simple fact is true that the growth has taken place in the county after 1950? A Yes, sir.

Q All right, sir.

Now, will you turn to plate 15. This shows population trends, 1940, 1950, 1960. Here again I will ask you whether the exhibit demonstrates that the growth in Chesterfield County was accelerated after 1950? A Yes, the pattern is quite clear. We did [L-204] grow after 1950 much more than we did before.

Q Now, sir, will you turn to plate 20 so that it will be perfectly clear in the record, I am going to be referring with respect to a number of these exhibits now to the pro-

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posed annexation line. This book, of course, was prepared and used as an exhibit when Richmond was seeking to annex a portion of Chesterfield County and on the exhibit there is set forth a line of the proposed annexation.

The Court: Boundary of an area sought?

Mr. Gray: Yes, sir. Boundary of an area sought.

Now, Mr. Burnett, the actual annexation which was granted was not as extensive as the line shown on this exhibit, is it?

The Witness: That is correct.

By Mr. Gray:

Q So that when we make reference to the boundary of the area sought, it is a point of reference, but actually there is still some part of Chesterfield County inside that proposed boundary? A That is true.

Q All right, sir.

Now, bearing that in mind and looking at [L-205] plate 20, would you examine the areas outside the proposed annexation line and tell us what is the highest density per acre that you find in any of those areas? A There is a small portion in area 801, I believe, which shows that it was 1.4 persons per acre, and only a very small portion of that which is outside of the proposed annexation line.

For the rest of the county, it is much below one person per acre.

Q Well, now, would you flip back in the book to plate 17 for a moment and look at the little blue tab that goes along as an explanation.

I ask you, sir, what definition does the United States Bureau of Census use in 1960 for the term, urban area? If

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you will read the last sentence in that blue sheet and give us the answer. A I quote from this. Their definition of urban is "1,000 persons per square mile or 1.56 persons per acre."

Q All right.

Go back to 20, now, then. Go back to plate 20.

As of 1968, none of the areas adjacent [L-206] to the proposed annexation line, that is on the county side of the proposed line, was urban by the Census Bureau definition, is that correct? A This is correct. As a matter of fact, it is considerably below their requirements.

Q Well, as a matter of fact, some of the land inside the annexation line wasn't urban by that definition, isn't that correct? A That is true.

Q Now, turn to plate 24, sir.

This plate purports to show as of 1968 the urban area of Chesterfield County by shading. That which was urban as of, up to 1968. I ask you, sir, if any urban area shows outside of the proposed annexation line? A No, sir.

Q And does some of the land inside the annexation line, the proposed annexation line, show as not being urban on that exhibit? A Quite a bit of it.

Q Now, Mr. Burnett, could you give us—how many magisterial districts do you have in the county? A Five.

[L-207] Q Five magisterial districts.

Would you give us, please, sir, on the basis of the 1970 census, give us the name of each magisterial district and the population density? A Midlothian Magisterial District has .43 persons per acre.

Q Persons per acre. All right. A Yes, sir.

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Cover Hill Magisterial District has .14 persons per acre.
Dale Magisterial District has .45 persons per acre.
Bermuda Magisterial District has .41 persons per acre.
Matoaca Magisterial District has .21 persons per acre.
The average in the county is .27 persons per acre.

Q Now, Mr. Burnett, the average in the county, how do you arrive at this, by taking the total acres in the county and dividing it into the total population? A Yes.

Q Now, if you look in the black book again, [L-208] this time look at number 56 and 56-A. These deal with the employment of the citizens in the City as of 1968.

I ask you, Mr. Burnett, what validity does this exhibit have insofar as it relates to Chesterfield County in view of the fact that these are 1969 figures? A They have no validity because some 48,000 people have been annexed into the City of Richmond and this, I believe, would change the percentages considerably.

They have no validity to the current situation.

Q The people who are annexed were the ones that lived nearest to Richmond? A Yes, sir.

Q And would be most likely the ones who worked in Richmond? A Yes, indeed.

Q Now, sir, will you turn over to or back to, in the same book, to City Exhibit Number 55. This is a bar graph of comparison of employment in the Richmond metropolitan area as of 1970.

I would ask you to comment on that exhibit, please, sir.

[L-209] A Well, this shows Chesterfield with 2,868 jobs. This, of course, is covered employment. We have obtained from the federal Census Bureau and the Virginia Employment Commission figures for 1970 which show that

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there are a total of 30,824 jobs in the county, Chesterfield.

There are 29,359 workers in the county of Chesterfield. These figures are contained in a study from, made by the county planning department, and we can statistically verify this fact, the fact which I have stated many times, that the county has more jobs than they have people to fill the jobs.

This does not reflect the new industrial plants that have been opened up in the last few months. I speak specifically to the S. H. Lawson Company. It does not show the prospects of the plants under construction. I speak of the $200 million ICI plant, the fiber plant from England, and the $18 million Brown Boveri plant from Switzerland. These figures may be a little more misleading or inaccurate, that is, the figures from the Virginia Employment Commission, since a county employer who has a Richmond address and does not have more than 50 people, if he is not specifically identified with the County of Chesterfield, then these [L-210] employees are counted in with those of Richmond.

Q You mean Richmond mailing address? A Yes, Richmond address, yes.

Similarly a Richmond concern having a branch in the county, if he does not have as many as 50 employees, is not required to break these employees down showing their place of work. So these also would be counted as Richmond employees.

In my opinion these methods could lead to rather gross errors.

Q Well, now, you have stated that based on surveys that have been conducted there are more jobs in the county than there are working people in the county.

Now, what effect does this have, in your opinion, Mr. Burnett, on the oft heard comment that Chesterfield

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County is a bedroom county for the City of Richmond? A I hope this will put this idea or this notion to rest rather permanently because we hear it consistently. I think this shows that we have more in-commuters than we have out-commuters.

Q All right, sir.

I want you now to look at, again we are [L-211] in the City book of exhibits number 58, which deals with the morning peak hour traffic volume. And in connection with that I would ask you also to consider plate number 40 in Plaintiffs' Exhibit Number 17, which is the peak traffic hour count at the annexation case.

Now, Mr. Burnett, bearing in mind that plate 40 was drawn and traffic counts were taken at the point of entry into the City at the new proposed, new City limit and City's Exhibit 58 counts the traffic at the new City limit, I want to ask you if you have any comment on what it appeared to date with respect to the annexation decision? A Yes. It appears that the decrease in traffic at the new City limits as contrasted to the traffic at the same routes at the proposed annexation line as shown on this exhibit, that the annexation line agreed on by the county and the City placed this into the City, that area with which Richmond had a community of interest. There is a marked decrease in the traffic volume.

One thing that is not taken into account, however, is the shift worker that works north of the county. He gets off of work at 8:00 o'clock in the [L-212] morning and goes home, goes northwardly. He is counted as a county resident going into Richmond to work. By this I mean for a chart of this kind to have real meaning we should have an origin-destination study to show that we could find out where these people come from and where they are going.

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Obviously since the county plants work on a 24-hour basis and there are many motels in the area, our county gets charged with a lot of miscellaneous traffic that it should not get charged with.

Q All right.

Now, if Your Honor please, while Mr. Todd was under examination, I asked if he would provide me with the material from which the annexation exhibit counts were taken with City Exhibit 58. They have 58-A which shows the actual traffic count on the two-hour basis.

In the annexation case there was not a similar count. He has provided me with those numbers and I would like to read them to the witness and have him answer my question with respect to them

Mr. Burnett, I want to ask you about a few of these records.

The pre-annexation count on Huguenot [L-213] Road is provided by Mr. Todd was 1579 vehicles per hour. What does it show up as on a per hour basis on the new system? A 620.

Q So the traffic there was more than cut in half? A Yes.

Q All right.

On Forest Hill Avenue, the pre-annexation count was 1,258. What is it in the new line? A 351.

Q On Jahnke Road, pre-annexation was 802? A This shows 434.

Q All right, sir.

On Broad Rock Road it was 638. A An even 300.

Q On Walmsley Boulevard it was 471. A 165.

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Q Now, on Jefferson Davis Highway, it was 1,103. A 966.

Q Now, that boundary did not change— A Didn't change at all.

Q —by annexation, did it? [L-214] A No, sir, no, sir.

Q On the Richmond-Petersburg Turnpike, pre-annexation figure was 1,197. A And after it is 1,632.

Q So that went up a great deal, but there again it was a boundary that was not changed by annexation? A Yes. And there has been some traffic growth and increase in employment.

Q Now, sir, I ask you to turn again in the City's Exhibit book to the City Exhibit Number 59 which sets forth the major public and semi-public facilities in the Richmond-Henrico and Chesterfield area and ask you to comment on that, please? A There is no denying the fact that there are many public facilities in Richmond, which is the capital of the State of Virginia.

To this extent, everyone in Virginia has a community of interest with Richmond. It is interesting to note that the person who drew our map, or who drew this map, didn't have very good knowledge of what is in Chesterfield County because there are at least a dozen major public or semi-public facilities in the county.

[L-215] Q Now, sir, would you look at, in the same book, 61 and 61-A which attempts to show community of interest in between Chesterfield and Richmond by virtue of the number of county residents who have their children born in Richmond or die in Richmond. I ask you to comment on these, sir. A Well, the plate showing, plate

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number 61 showing the births occurring in Richmond, here is a decrease in the births from Chesterfield County through these years.

Many of our citizens go southwardly to the hospitals of Hopewell and Petersburg for these services; however, this exhibit is based on pre-annexation information and cannot be delineated to the present county line insofar as Chesterfield is concerned.

Q Do you have any information on the percentage of City or county resident births occurring in Richmond in 1970? A Yes, I have this information.

According to the records obtained from the Bureau of Statistics, the figure for Chesterfield in 1970 was 54.6 percent. If this is a valid test of community interest, Chesterfield has less community of interest with Richmond than does Amelia County which [L-216] has 70.8 and Charles City with 88.6 and Goochland, Hanover and New Kent and Powhatan. Interestingly enough, Charles City County must have more of a community of interest with Richmond than Richmond does itself since Charles City has 88.6 and Richmond has only 84.7

These figures, I think, show a steady decline in percentage of births in the county and the City since 1965.

[L-219] * * *

Q All right.

Now, Mr. Burnett, if you look at City Exhibit 54 again, it is in the book of exhibits. This deals with certain economic functions in the area. I want you to look at the figure for retail sales and ask you is that a 1970 figure? A That is a 1970 figure.

Q Insofar as Chesterfield is concerned why would this

tend—the counties, both lumped together in that white bar on there, insofar as Chesterfield contribution to that bar, why would it be low in 1970? A Because January the 1st, 1970 Richmond annexed about 70 percent of our retail sales, maybe 72 percent of our retail sales.

Q Well, if that bar had been, if that retail sales portion of this chart had been drawn as of 1967 instead of 1970, would it have made a substantial difference in the length of the Richmond line and the comparative county line? A Yes, it would have made a great deal of difference. Our sales amounted to about 75 million during that time. Then that would have to be subtracted [L-220] from Richmond and added to the county.

Q All right, sir.

Now, let's look at the value added by manufacturers. In what year was used to compute those lines? A 1967.

Q All right, sir.

What happened between 1967 and 1970 in Chesterfield County which would have given Chesterfield County a greater volume of value added by manufacturing in 1970?

A During this period of time Chesterfield strengthened its hold on the title as the nylon capital of the world by substantial addition to the E. I. duPont Company and addition to the Allied Chemical Company, both of whom, both of which manufacture nylon.

Also, during this period we had additions to the Reynolds Metals Company. We had the location of the Narox Chemical Company, the $15 million American Tobacco Company, Richmond Plastics, and many others.

The Virginia Electric and Power Company would add a total value of manufacturing. This company [L-221] had $75 million addition.

On the other hand, Richmond lost Liggett and Myers during this time and Friedman Marks, I believe, clothing company went to Henrico.

So that as of 1970 these figures would be greatly different.

Q In other words, Mr. Burnett, as you look at the City's Exhibit, bearing in mind annexation, you have to also bear in mind which year they are using because sometimes they use one pre-annexation and sometimes they use one post-annexation and sometimes it just happens that it looks better their way depending on which year they use, is that right? A Yes, it appears that if the pre-annexation figure is helpful, that it is used, and if the post-annexation figure is helpful, whatever way you want to throw it.

Q All right, sir.

Does Chesterfield County have an industrial authority? A Yes, a very active one.

Q What was the effect of the annexation case on the efforts to industrialize in Chesterfield County? [L-222] A Well, I believe it had a great effect. We can point with proof certain instances in which people shied away from coming to the county because they did not want to place their plants in a position of jeopardy. Sometimes it is hard to build a new plant and operate it on a marginal basis with the prospect of annexation, and much higher taxes which might force them into bankruptcy.

I can remember one case in point with the Royal Manufacturing Company that told us this during the annexation trial.

Q All right, Mr. Burnett.

In your opinion, does Chesterfield County have a com-

munity of interest with Richmond? A Yes, but no more so than to our neighbors to the south. Perhaps we have a greater community of interest with Colonial Heights, Petersburg, Hopewell than we do with Richmond.

To buttress this, may I point out the following: Chesterfield has had a contract with the City of Petersburg for over 15 years to treat the sewage from the Ettrick area in the southern part of the county. Chesterfield has had a contract with Colonial Heights for over 15 years to treat the county's [L-223] sewage in those areas around that city. Both of these contracts call for a nominal charge. In the case of Petersburg, it is only seven cents per 1,000 gallons to treat sewage.

For many years Chesterfield bought water from Petersburg and Colonial Heights for prices of about 13 cents per thousand gallons.

Chesterfield, with Colonial Heights, Petersburg, along with Prince George and Dinwiddie formed the Appomattox Water Authority which is capable of producing 100 million gallons of water a day.

Perhaps the best area on the east coast with respect to volume and purity of water.

There is no question about the fire or police problems.

In Hopewell, Colonial Heights or Petersburg, there is reciprocity, completely. I can recount many cases over the years where Chesterfield helped all three of these cities and all three of these cities have helped Chesterfield with no thought of ever billing for such a service.

Chesterfield, with the city to the south creates the John Tyler College. This, I think, is a monument to cooperation. Problems of raising [L-224] enough money to start this college were easily solved because each locality realized that it was doing something to help out the youngsters of the future.

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Since Chesterfield and Colonial Heights lie in the same drainage area, it is necessary to plan to meet common sewage problems or common drainage problems.

We have had many sessions on these problems and I believe we can continue to work with Colonial Heights for our common benefit.

Chesterfield and the localities to the south have formed the Appomattox Basin Industrial Development Commission. This has been in operation for ten years financed by each of about ten governments.

Its function is to bring industry into the area.

Colonial Heights and Chesterfield have cooperated in the field of solid waste disposal. They are now making new efforts to cooperate further on this very important problem.

Since 1948, Colonial Heights became a city, Chesterfield has had a joint Welfare Department with Colonial Heights.

We work very closely together with no [L-225] problems.

Since 1948, Chesterfield and Colonial Heights have cooperated in a Health Department which we think is one of the best in the State of Virginia. Each shares a per capita cost and there is no problem about arranging the finances of this facility.

We also share with Colonial Heights our Circuit Court Judges and for years we had the General Assembly recognize our community of interest by having us have common delegates and also a common Senator.

When you contrast the cooperative existence from the south to that we have experienced from Richmond, you can easily see why I say our community of interest may be much greater to the localities to the south.

Q Now, you speak of contrasting that with your experi-

ence in Richmond. What do you mean by that? A At a time when Chesterfield began to grow, we needed water and we needed sewers. In the mid-1950's, officials sought to negotiate with Richmond for both. We only got a contract for water at a very high price, 33 cents per thousand gallons. Bear in mind we were paying Petersburg and Colonial Heights [L-226] 13 cents per thousand gallons. We could only get a water contract for a long period of time, something like 20 years, or ten years it came down to later.

We needed sewers, but Richmond for years would not agree to anything until we were able to get a very small area around Southside Plaza. Later the City would agree to taking no more sewage until the county guaranteed to give to the City of Richmond all of the sewage north of the Falling Creek.

For this small area around Southside Plaza, we paid the City of Richmond 44 cents per 1000 gallons, and it dumped it into the James River raw, untreated in any way. At the same time we paid the City of Petersburg seven cents per thousand gallons which is one-sixth as much, and Petersburg gave the sewage primary treatment.

The City has widely publicized the fact that Richmond or that Chesterfield citizens use the City streets, libraries, parks. These costs are small indeed to the amount of money that Richmond has made from the utility sales in our county.

When Chesterfield began to enlarge its sewage treatment plant, Richmond tried to block the receipt of small federal grants to help out in this [L-227] construction.

When Richmond wanted to deepen the Grindal Creek, it came to our Board of Supervisors and the Board with no problems whatsoever said, come on out in the county and

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dump your drainage into the creek. There will be no problem.

When we tried to go back across this same creek for one-third of a mile with a sewer line, some three or four years later, they denied us the right to do it. It cost us over $300,000 to build a pumping station and a force main around this small portion of land in the City.

To me, this is just not being a good neighbor. It doesn't establish or promote community of interest.

In the 1960's, if we asked Richmond to help us to fight a fire on occasion, they would send out a truck. We had to occasionally do this. We were billed for some $150 per hour per truck.

Then, after the annexation, we agreed to a plan of reciprocity which involved no payment. Since that time we have helped Richmond 26 times and they have helped us once.

Richmond, throughout the years, I believe, [L-228] has negotiated with a position of authority and has acted rather paternalistically toward the County of Chesterfield, and certainly has not been a good neighbor.

I was impressed with one of the witnesses here who said that metropolitan areas should cooperate before they consolidate. Certainly, if this is a prerequisite to consolidation, that is if cooperation is a prerequisite to consolidation, we certainly aren't ready.

Q All right, sir.

Mr. Burnett, turn now to plate three, please, sir, in Plaintiffs' 17.

This plate shows a number of times or shows an area of each annexation by the City of Richmond throughout the years. How many times has Chesterfield been subject to annexation by the City of Richmond. A This plate

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shows three times and when you add the 1971 to it, it will show four times.

Q Four times? A Yes, sir.

Q If you turn to the blue tab in the book following this, you get the number, you get the [L-229] acreage, or the square mile and acreage. That is the number of square miles annexed each time, is it not? A Yes.

Q Now, in 1942 the annexation involved both Henrico County and Chesterfield? A Yes, sir. Also some others.

Q It is not broken down into how many square miles came from each.

1970 figures are not shown, Mr. Burnett. What was the square mileage that was received from Chesterfield in 1970? A Approximately 23 square miles.

Q And what was the total area of the City of Richmond prior to 1970? A 39.89 square miles.

Q Richmond was 39.89 square miles prior to 1970? A Yes.

Q In 1970 they got 23 additional square miles from Chesterfield? A Yes.

[L-230] * * *

Q Now, sir, turning back to those annexation figures, again on plate three. Do you have any information concerning the racial composition of the population annexed into the City of Richmond in [L-231] these annexation cases which have taken place? A Yes, I have.

Q Would you give it to us, please? A In 1906 there were taken into the City of Richmond 1,245 white school children, 644 black school children.

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In 1909 there were 1,082 white school children, 541 black school children.

In 1914 there were 2,565 white school children and 308 black school children.

1942 there was 1,721 white school children and 307 black school children.

1970 there were 6,616 white school children and 237 black school children.

Mr. Gray: Now, if Your Honor please, this information comes from the response to our interrogatory number five to the School Board of the City of Richmond and I would like to put into the record at this point, in addition to the figures that Mr. Burnett has read with respect to the 1970 population, the 1970 figures increase, shows the increase in number of black students and white students actually in the Richmond school system.

In addition, the interrogatory tells us [L-232] that there were 136 black students and 3,251 white students who live in the annexed area but who, because of provisions of the annexation decree relative to the schools were actually attending schools in Chesterfield County, but they are residents of and eligible to attend Richmond schools. 136 black and 3,251 white.

By Mr. Gray:

Q Now, Mr. Burnett, turn to plate 36 in this exhibit, please.

This plate sets forth the telephone service available in Chesterfield County from the Richmond exchange. Would you tell me, Mr. Burnett, whether all of Chesterfield County is served out of the Richmond Telephone exchange? A No, it is not. All of the lower part of the county outside of the Chester exchange is in the Petersburg

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and Hopewell exchanges. There is also a small part in the western end of the county that is in the Powhatan exchange.

I might say that from Petersburg and Hopewell, the toll to Richmond is about 25 cents for three minutes at this time but it is proposed to be raised to 30 cents for direct dialing and 40 cents for operator calling in the near future.

[L-233] Q Have you obtained from the telephone company a map showing roughly the area served by the Hopewell exchange, the Petersburg exchange and the Powhatan exchange? A We have, sir.

Q Does it show the Petersburg exchange in green? A Yes.

Q Hopewell exchange in yellow? A Yes.

Q Powhatan exchange in orange? A Yes.

Mr. Gray: We offer that, if Your Honor please, as Exhibit Number 43.

The Court: So ordered.

Mr. Gray: Mr. Burnett has been on an hour. I don't know how long you want to go.

The Court: I didn't want to interrupt you. I thought I was helping you. I saw that you intended to use plates three, 12, 36, 37 and 43. I thought I would let you get through those so that you wouldn't have to break your trend of thought. Then we will see where we go from there.

Mr. Gray: All right, sir.

[L-234] By Mr. Gray:

Q Now turn to plate 37, Mr. Burnett. This plate purports to set forth the area in Chesterfield County which is

served by the City-type delivery, postal delivery. Does it indicate that practically all of the proposed annexed area was so served? A Yes, and there is a small portion outside of the proposed annexation line that is served by the Richmond Post Offices, but that does leave the vast majority of the County served by the non-City type postal service.

Q All right, sir.

Now we go back in the book to plate 43. We talk about population density again. This time we are talking about a projection of density as of 1985. Bearing in mind the Census Bureau definition of urban, that is 1.56 persons per acre, do you find any areas which would be urban as of 1985 which lie outside of the proposed annexation line? A Yes. There are approximately five small areas outside of the annexation line which would have more than 1.56 persons per acre. I think you can see this piece, if you would look at plate 44, I believe.

Q All right, sir. Let's look at 44. [L-235] A You can see from this plate that the vast majority of the county will be rural even after 1985, or up to that time, in any event.

Q The shaded area which extends through all of the proposed annexation area, and a little beyond it, purports to show what is projected as urban in 1985, is that correct? A Yes.

Q And leaves on an acreage basis the vast majority of the county still not urban in 1985? A Yes. That is true.

Q Is Chesterfield rated the same for fire insurance policies as the City of Richmond? A No, we are not.

Q Is it in the same territory as Richmond for private passenger automobile rating insurance rating? A Part of it is, but the lower portion of the county is tied in with Hopewell or Petersburg.

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PROCEEDINGS

ptember 2, 1971) (Thursday at 10:00)

The Clerk: Civil Action 3353-R, Carolyn Bradley et al., us The School Board of the City of Richmond, Vir-a, et al.

Case continued from yesterday

Mr. Gray: Your Honor, before I commence interroga- of Mr. Burnett this morning, I would like [M-5] to e for the record that upon stipulation of counsel for the and counsel for the plaintiffs we have entered and filed Exhibit 19 for Chesterfield County affidavits of former ge Garland Jefferson and the present Judge Ernest es of Chesterfield Circuit Court to the effect that begin- with Judge Jefferson's tenure up until the present e has been no suit brought in the Circuit Court of sterfield County for the purpose of enforcing racially ictive covenants on land.

* * *

DIRECT EXAMINATION (Continued)

Mr. Gray:

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Mr. Burnett, you talked now for a while about the local spirit of Chesterfield County. What effect do you consolidation of the schools of Chesterfield with those ichmond would have on that spirit? [M-13] A In udgment, it would kill the great citizen participation in community and convert us to just another area where people supinely sit back and wait for the government

to take care of their every need. In such event the tax rate would certainly have to go up to an inordinate degree, perhaps, but even more important is the fact that the children are going to lose the example and the possibility of participating together with their own parents or the people in the neighborhood in recreational programs.

This may be the only opportunity that some of these children get to work in a playground with their parents and with their elders from the neighborhood. And it certainly applies where character is built. It is certainly going to be a hard thing to lose.

Q What do you see on the total local government if school consolidation is ordered? A Well, the problem of trying to support a school system which is not wanted would lead, I think, to a rather untenable situation.

For example, how would you finance school construction on an area basis? Would the county citizens approve bond issues for school construction in other areas?

[M-14] And if the bond issues failed, would the county have to initiate a pay-as-you-go plan that would involve a huge rise in taxes? As an example of this sort of thing under the annexation decree, Richmond is supposed to pay to Chesterfield the cost of educating their children. Of course, we are having our problems. It looks as though we are going to have a protracted law suit to collect this amount.

These are just a few of the imponderables which would result in school consolidation.

Today when there are many localities which turn down bond issues, Chesterfield has consistently passed huge school bond issues for new schools.

In fact, we have passed bond issues totaling $58,300,000 in the last ten years.

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Now we have to present a plan to the various areas of our county to get a bond issue passed to show that they are getting their portion of the amount of the school funds in a consolidated system. This would be simply hard to do. In Chesterfield, the governing body tries to control the cost of school and school operation. We labor long and hard over the school budget. We quite frequently cut this budget or reduce the expenditures as much as a million dollars. We try to get [M-15] the very best system possible for the least amount of money expended.

In Chesterfield a large portion of the general fund is spent for school purposes. If we have no control over this in our own budget, then setting the tax rate will become merely a perfunctory sort of thing. When complaints are received and the local government can do nothing about them, then I think chaos will prevail and the effects of school consolidation on local government will be highly catastrophic.

[M-16] * * *

Q Now, sir, what public transportation is available in Chesterfield County? A Virginia Transit bus runs, Virginia Transit Company runs a bus to the duPont, which is just across the City-County line, to the south.

Q That would be on— A U. S. Route 1, on Jefferson Davis Highway.

Q Just immediately across the City limit? A Yes. The main gate at duPont. The Bon Air Transit Company runs a bus up Forest Hill Avenue to Bon Air, which is again just across the City-County line. And if we do not consider the interstate busses, bus routes such as Trailways and

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Greyhound, then [M-17] Chesterfield has no other public transportation service.

Q Well, aside then, from these two little extensions of Richmond bus routes, one to duPont and one to Bon Air just across the line as far any internal local transportation system over the vast expanse of Chesterfield County, there is nothing? A That's right.

Q One of the allegations in this case, Mr. Burnett, is that the licensing agencies in Chesterfield County operate in such a manner as to make it more difficult for members of a minority race to establish themselves and professions in Chesterfield County.

Would you like to comment on that? A Chesterfield enjoys complete reciprocity with Colonial Heights, Hopewell and Petersburg. Also Richmond, with the exception that a person in the county holding a license permit for electrician's work is not recognized in the City of Richmond. We do recognize the holders of such cards in the county.

As for—did you say business and professional licenses?

Q Yes. A Well, the business and professional licenses in our county are much cheaper than those in [M-18] the City of Richmond.

As a matter of fact, a merchant doing $100,000 in business pays to the County of Chesterfield $867 less than he pays to the City of Richmond.

If he had a $500,000 in gross business, which is not abnormal at all, he saves $3,221.50 by locating in the county.

Similarly, contractors who do a quarter-of-a-million dollars worth of business would save $380 by locating in Chesterfield.

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And if you did $2 million worth of business, again not abnormal for contractors, he would save $3,005 by locating in the county.

Professional workers doing $40,000 worth of gross business would save $482 by being in the County of Chesterfield. If they did $60,000 worth of business, they would save $718.

I know of no racial discrimination whatsoever in any of these categories.

[M-19] * * *

Q While we are waiting for that, Mr. Burnett, on yesterday the document known as the SUA report was put into evidence. That report was prepared prior to the annexation of the urban portion of Chesterfield County, was it not? A Yes, indeed.

Q Have you any indication from anyone that those same consultants would come up with the same conclusions following annexation? A Well, I am very sure that were those experts to visit the scene today, and were they employed to write a similar report on the conditions that exist today, I am sure that their ideas would be much changed.

Q I want to very quickly now, turning to the PAS report, which is the Richmond School Board's 89, ask you to just make your answer as brief as you can, and ask you to comment on the reasons why this public administration group did not recommend consolidation of Chesterfield with Richmond?

One of the reason they gave was it was relatively independent as to water supply, but depended to some extent on Colonial Heights and Petersburg. What is the situation with respect to the water supply of [M-20] Chesterfield

today? A The Appomattox Water Authority has taken over the responsibility of serving the water to the southern end of the county as well as those two cities.

Q So that you have a completely sufficient water supply? A Yes.

Q What is your comment with respect to the fact that a portion of Chesterfield County as it stood in 1959 would be served and more readily by Richmond? Has the annexation changed that? A Served in what way?

Q That as far as the treatment of sewage is concerned? A At the time of annexation in 1970 we were treating sewage in that area by way of pumping station and force mains. It goes into the city now normally by gravity for the most part, or will when they finish their system. This condition has been changed considerably.

Q This report spoke of the new administration building at the courthouse. What has happened since 1959 in that regard? A We have had several additions and the [M-21] million dollars mentioned there has been ballooned up several times, I am afraid.

Q With respect to the industrial development, I think you have already mentioned that we have had a ballooning industrial family in the county since '59? A Yes, we have had quite a few additions.

Q Mr. Burnett, would you tell the Court some of the reasons you feel Chesterfield County would resist annexation attempts other than reasons of race, which is one of the allegations here, that we have resisted annexation for racial reasons? A Well, we have just discussed the great disparity in business and professional taxes. The same is true, I believe, of all taxes in the county.

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The fact that the county citizens was true or is going to be—the fact that he was going to be taxed at the same rate as the City citizens and not receive the services, and the fact that the City taxes were becoming increasingly burdensome is one of the main reasons, I believe, that Chesterfield would resist annexation by Richmond.

But to further explain that Chesterfield County for many years was a rural county. Our thinking [M-22] was rural. We began to grow in the early 1950's. We needed help in the water and sewer system. The cities to the south helped us. Richmond tried to enhance their annexation status by utility negotiations and after years of negotiations, the County officials just came to the conclusion that we had to do it for ourselves.

We had an influx of new citizens. Our utility, our water department was stretched almost to the breaking point. We solved this by building a really first class water system. Now, that has no problems. We have a capacity that is capable of serving the county for many years in the future.

The sewer system, it took us eight long years of negotiations with Richmond to realize that we were not going to get any cooperation from Richmond. So we passed a bond issue. We did it ourselves.

Now the citizens, I believe, are quite proud of what they have done. The same thing is true of our school systems.

In the late 1950s we had children using hallways, stages, libraries, they were tremendously crowded. The citizens themselves took a strong stand in passing bond issues for new schools.

From 1958 to 1968, Chesterfield built an [M-23] average of 98 schoolrooms each year. This is one room for every 2.7 working days.

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Now, every citizen of our county has a justifiable spirit of achievement, and point with fierce pride to the advancements in the utility systems and the school systems.

Here, again, Chesterfield has four cities on its borders, one of which is all-white. Race has nothing to do with the feeling that we want to keep the county together. Chesterfield citizens, I believe, and they tell us that the government is doing a good job, the Board of Supervisors, a very conservative group of people, it tries to keep expenses down. This has been reflected, I believe, in the county's tax rate, which is about half of that of Richmond.

Our citizens want to keep down the cost of welfare and the cost of administration. They want the best schools for the lowest possible cost. They know, I believe, that they can get this from our present government. These citizens tell us to resist annexation. Race has nothing to do with our feeling.

As a matter of fact, the county has resisted attempts from the annexation attempts from Colonial Heights which is an all-white city, just as [M-24] strongly as we did from the City of Richmond.

Chesterfield is a separate entity, completely self-contained and self-sufficient.

It is not necessary for us—it is not necessary for us to get any water, services, or school facilities or other things from the City of Richmond.

Chesterfield has its own utilities and is not dependent on Richmond in any way. These are just some of the reasons, I think, that we would and should resist any further attempts to fragment the county.

* * *

[M-31] Q All right.

In your opinion, Mr. Burnett, does all of Chesterfield

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County have the same degree of economic and social connection with Richmond, each part of it have the same degree of connection? A No, sir. It does not. We have already discussed the fact that the southern half or some major portions of the county has a great community of interest with Hopewell, Petersburg, and Colonial Heights. It has much closer ties with these three cities.

[M-36] * * *

CROSS EXAMINATION

By Mr. Lucas:

[M-50] * * *

Q Directing your attention, sir, to the Richmond Regional Planning Commission report, Paths to Progress from the Richmond Region 1970-71, let me ask you to read the first full paragraph on page seven.

The Court: Is this an exhibit?

Mr. Lucas: No, sir. I think perhaps it has been referred to so much that we perhaps should give it a number later.

The Court: I want to make sure.

The Witness: "Another facet of the [M-51] unemployment problem is the number of small business opportunities available to members of minority groups. A lack of sufficient capital is often the greatest contributor to this situation, but inadequate training is also a factor. Provisions of a greater number of such opportunities will not only be beneficial to the new businessmen, but in terms of employment increase business activity to the community as a whole."

By Mr. Lucas:

Q Would you read the top paragraph and its heading

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on page 11? A The heading is "Employment: What action should be taken to improve employment opportunities for a low-income and minority group?"

Q Read the paragraph. A "While the Richmond area basically has a tight labor market with low unemployment, there are disadvantaged workers who are jobless or unemployed. These disadvantaged tend to be concentrated in minority groups. In the Richmond region they are predominantly black. The disadvantaged citizen needs improved employment opportunities. Consequently there must be a deep understanding of the barriers to employment opportunities which exist for low-income and minority groups. These [M-52] groups require more adequate training in order to prepare for the work experience. They also face environmental problems such as the need for adequate housing and transportation to and from work. Without an understanding of these and other problems, too, no effort to help increase employment opportunities for a low-income and minority group can be fully successful."

Q Would you read the following two paragraphs. A "What action should be taken to improve small business opportunities for minority groups? Business opportunities should be open to minority groups in order to bring them into the mainstream of economic life. Increased ownership of businesses by members of minority groups must be thought of not only as a means of improving their standard of living, but also as a contribution to the economic well-being of the surrounding community and their region as a whole. The Richmond region, particularly the centrol city and the outlying counties, has a large number of blacks. Some of these minority groups, minority group citizens, do own small businesses, but the percentage is not in propor-

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tion to their population. In addition, the average gross receipts of those black-owned businesses [M-53] in existence are considerably lower than the receipts of their white-owned counterparts.

To a significant extent these lower receipts are a result of discrimination. According to a survey conducted in the Richmond area, black businessmen are victims of both blatant and subtle discrimination which makes it extremely difficult for them to move into prime business areas."

[M-70] * * *

CROSS EXAMINATION

By Mr. O'Brion:

[M-82] * * *

Q Now, with regard to this at the beginning testimony used by Richmond in the 1967 figures, your testimony was that, and is, that Chesterfield in your opinion has a much stronger community of interest with Colonial Heights, the Petersburg area, than it does with the City of Richmond? A I did not say that.

Q Well, what is your testimony? A I said that Chesterfield has a community of interest with four cities, and perhaps we had more a community of interest with the cities to the south than we do with Richmond. We pointed out several reasons why this was true.

Q But your testimony is that you feel that there is more of a community of interest with the city [M-83] to the south than there is to Richmond to the north? A Yes, that is a fair statement.

Q Well, now, the City of Peetrsburg has approximately 70 percent black students, and if it should bring a consolidation suit against Chesterfield County and Colonial Heights, which is a hundred percent white, and Hopewell, which is 80-some percent white, would you have the same testimony in that case that Chesterfield has a greater community of interest with the Petersburg area than it does with Richmond? A First of all, I don't believe that the officials of Petersburg would ever do such a trick as that.

And after such a hypothetical situation came about, we would have to examine the situation and present the best evidence we could at the time.

Q So your testimony as to community of interest might change depending on which case you are testifying in? A I don't think you could alter the facts. It just might be we wouldn't brag about it so much.

* * *

[M-100] J. R. BELLAMY

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Gravatt:

Q State your name, please.

A J. R. Bellamy.

Q Mr. Bellamy, you are a State Game Warden assigned to Chesterfield County? A That's right, sir.

Q Does the State of Virginia keep records of the harvest of game in the various counties of the State from year to year? A That's right, sir.

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Q Do you have before you figures for game harvested in Chesterfield County? And at this point, I refer to deer.

[M-102] * * *

Mr. Gravatt: Just the one year. I am just asking him about 1970 for wild turkey, please, sir.

The Witness: We had 31 that were killed in the fall season. I believe we had about 35 killed in the spring gobbler season, and we ranked about 12th.

By Mr. Gravatt:

Q Have you got figures on the number of beaver trapped in the county?

* * *

By Mr. Gravatt:

Q Do you have the figures, sir?

[M-103] * * *

Q 1969-70, please, sir.

A We had 69 beavers trapped in Chesterfield and we ranked 23rd in the State.

Q All right, sir.

Do you have the figures that you have used in a folder there? A I do that.

Mr. Gravatt: May it be filed as an exhibit, sir?

[M-105] * * *

VIRGINIA A. CROCKFORD

was called as a witness and, having been first duly sworn, was examined and testified on her oath as follows:

District Court Proceedings of September 2, 1971

Direct Examination

By Mr. Gray:

Q State your name, please. A Virginia Crockford.

Q Mrs. Crockford, I believe you are chairman of the School Board of the City of Richmond, is that correct? A That's right.

Q How long have you served in that capacity, Mrs. Crockford? A For two years. This is the beginning of the third year.

Q And were you a member of the School Board prior to that time? A Yes, sir.

Q And how long have you served as a member of the School Board? A For nine years.

Q Nine years. During the time that you were a member of the School Board, Mrs. Crockford, did the [M-106] School Board of the City of Richmond in this litigation oppose the desegregation of its public schools? A Did the School Board?

Q Yes, ma'am. A In Richmond?

Q Yes, ma'am. A Oppose the desegregation of public schools?

Q Yes, ma'am. A Not while I have been a member.

Q All right. Did you have in effect until recently, a freedom of choice plan? A Yes, we did.

Q Under that plan, were all of the schools integrated? A Not all of them, no.

Q All right.

When did the problem which is now alleged to exist with

APPENDIX

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MAR
MICHAEL RO

In The

Supreme Court of the United States

October Term, 1972

No. 72-549

THE SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,

Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,

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No. 72-550

CAROLYN BRADLEY, ET AL.,

Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

CERTIORARI GRANTED JANUARY 15, 1973
PETITIONS FOR WRITS OF CERTIORARI FILED OCTOBER 4, 5, 1972

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[Pet. A. 603]

respect to schools that are majority black being incapable of providing quality education? When did that problem first arise? A You expect me to pinpoint the year?

Q A decade would do.

A I suppose it has existed as long as we have had all-black schools.

[M-107] * * *

Mr. Gray: I show you a set of minutes and ask if these are minutes of the School Board of the City of Richmond for a meeting of July 20, 1967?

The Witness: Yes, sir, they are.

By Mr. Gray:

Q I ask you to look at page 135.

[M-108] * * *

Q I ask you to look at page 135, Mrs. Crockford, if you would, please, ma'am, and read the paragraph which is entitled "Award presented." A "The superintendent presented to the chairman an award given by the magazine 'Parade' and the National Education Association citing the Richmond Public schools as a 'pacemaker leading the way to better education for America's youth.' "

Q So that in 1967 the School Board of the City of Richmond was able to do a competent enough job with its school system that they were recognized nationally for the work they were doing in education? A We have always been recognized nationally for certain programs and we would continue to be for certain programs.

Q All right.

Now, Mrs. Crockford, if you will identify another set of minutes for me dated November 11.

The Court: Before you get away from that, I did not catch who gave the award.

Mr. Gray: Oh?

The Witness: The Parade Magazine.

[M-109] The Court: Parade Magazine?

The Witness: And the National Education Association.

The Court: Thank you, ma'am.

By Mr. Gray:

Q Would you identify another set of minutes, please, ma'am? A As to the day, November 21, 1967.

Q Now, I ask you to look at page 164 and ask you if on that day the School Board of the City of Richmond was approving pupil placement grants? A Yes, sir, we did, but as you know, this was almost a requirement of State law. We had no choice.

Q Yes, ma'am. Wasn't anything you could do about it, was there? A That's right.

Q Wasn't anything Chesterfield could do about it and there wasn't anything Henrico could do about it? A That's right.

Q Under State law? A That's right.

Q They had to pay the grants? A That is exactly right.

[M-110] Q Thank you, ma'am.

Does a School Board member in Richmond have to live

within the City of Richmond? A That's right. We have to be registered voters in the City.

Q Have to be registered voters in the City.

All right. I show you another set of minutes under date of December 21, 1967 and ask you if that is a set of those minutes? A That is what it says.

Q Well, is it? A It appears to be.

Q All right.

Would you look at page 171, please, ma'am, and tell me at the bottom of the page whether at that meeting there was presented the articles of incorporation of the Richmond Public School Foundation? A That's right. There was.

Q And would you look at the next page, page 172, and read me the second paragraph of the Foundation's charter, Roman Numeral II of the charter. It begins at the top of the page. A Second paragraph?

[M-111] Q Well, at the top of the page. A "The corporation is organized exclusively for educational purposes and to foster interest in and promote the development of Richmond schools."

Q All right.

Now, would you read the requirements for the directors, two classes of directors? Would you read the requirements for class A director and class B directors. A "Class A directors shall consist of three persons who are residents of the City of Richmond and who do not hold an elective or appointive position or an office in the government of the City of Richmond."

Do you want me to go ahead?

Q Yes, ma'am. A "Said directors shall serve for terms of three years each and shall be eligible to succeed themselves for any number of terms. The class A directors hereinafter set forth shall initially serve for a term of one, two and three years, respectively, as determined by lot, and thereafter, shall be eligible to succeed themselves for terms of three years each for any number of terms.

"Class B directors shall consist of two [M-112] persons who are members of the Richmond Public School Board. Each of said directors shall serve for a term co-extensive with his or her term on said board."

Q Mrs. Crockford, in order to be on that board one had to be a resident of the City of Richmond? A That's right.

Q This was designed for promoting and developing the schools of the City of Richmond? A That's right. It was set up to accept gifts for the schools.

Q All right.

In that same set of minutes, back on page 171, Mrs. Crockford, I believe there is a reference to the naming of the John F. Kennedy High School, is that correct? A That's right.

Q And that had previously been referred to in your minutes as the East End High School, is that right? Am I right about that? It did not have a name? A It didn't have a name prior to that.

Q And prior to that you had been referring to it in the minutes as the East End High School? A I am not sure how it was referred to. We called it the school on Cool Lane most of the time because we didn't have any identification.

[M-113] Q Was that school when it opened an exclusively black school? A Yes, it was.

Q On December 21, 1967, when you were creating a corporation for the benefit of the Richmond school system, you were also opening an all-black school? A That's right.

Q All right.

Now, I ask you to look at the minutes of April 26, 1968 and ask you if that is a set of those minutes? A Yes, they are.

Q Now, Mrs. Crockford, this meeting was a special meeting of the Board, I believe, was it not? A Yes, it was.

Q And I understand, of course, that you haven't had time to read these minutes, but I will see if I can refresh your recollection as to whether this was the night when the School Board met for the purpose of receiving a summary from a self-study which was made of your school system? A I believe it was 11:00 o'clock in the morning.

[M-114] Q In the morning? A Rather than night.

Q All right.

You are familiar with that study and with the summary of that study? A Vaguely.

It was 1968, so that has been a long time.

Q Do you recall anything in that study which found any new things and some weaknesses in the school system? Do you find anything in that study that dealt with the question of races in the schools? A Not that I recall at the present time.

Q Thank you, ma'am.

Now, Mrs. Crockford, prior to September 1st, 1970, if the schools in the City of Richmond had been comprised in student population of 90 percent white students and 10 percent black students and the students in the two counties adjoining had been comprised of 90 percent black children and 10 percent white children, would you have recommended consolidation of these three school districts? A That would be hard for me to say what I would do. It would depend on the socioeconomic status, [M-115] I think, of the children who comprise the school system in the City of Richmond because the cultural background of the children makes a great deal of difference as to the school.

Q Well, if the socioeconomic background follows the pattern that has been described here, that those in the black race would be of the lower socioeconomic group and those of the white race would tend in a majority to be of the higher socioeconomic groups, would you have then recommended consolidation of the three districts? A If I were in the City of Richmond on the School Board?

Q Yes, ma'am, School Board, City of Richmond. A I could answer that either yes or no, but I would have to qualify what I would answer by saying that that couldn't possibly apply to the City of Richmond, nor do I see it applying to any city. So it is awfully hard for me to tie myself down and say yes or no to this when I know it couldn't possibly exist.

The Court: I take it then that you can't answer the question, is that it, Mrs. Crockford?

The Witness: I can't because it seems to me to be too impossible.

[M-116] The Court: Regardless of the reason, you can't answer it. All right

By Mr. Gray:

Q Mrs. Crockford, I will ask you to identify one further set of minutes. November 19, 1970. This set of minutes—is this a set of minutes of that meeting? A Yes, that is the minutes.

Q And within that set of minutes is there contained a letter which you wrote as chairman to the mayor of the City of Richmond? A That's right. There is.

Q I am going to ask you if you would, please, if you would read that letter into the record? A The entire letter?

Q Yes, ma'am. A It is right long, you know.

Q I know it is, but I feel in fairness that you ought not to paraphrase. Read it all.

The Court: It may be read. Go ahead.

The Witness: "To the Honorable Thomas J. Bliley, Mayor of the City of Richmond, City Hall, Richmond, Virginia. Dear Mayor Bliley:

"We have received your communication [M-117] concerning the recommendation of the City Council that the Richmond School Board reconsider its action and rescind at this time the motion to join the School Boards of Chesterfield County and Henrico County in the present litigation involving the Richmond School Board before the United States District Court for the Eastern District of Virginia.

"Please know that the School Board is keenly aware of the necessity that it maintain continual channels of communication with the Richmond City Council. Furthermore, each member of the School Board fully understands that, while it is charged with the primary duty of providing the best possible school system for the children of Richmond, it must remain responsive to the people who support such a system."

"We thereby have seriously and thoroughly tried to balance in our deliberations the importance that we listen and try to abide by recommendations of the City Council against the judgment, study and deliberation which went into our decision. Resolving this has not been easy."

Q Excuse me, Mrs. Crockford. In the first line of that paragraph you were reading, you said, "thereby," and the word is "therefore," so the record will be [M-118] clear. A I am sorry.

Q That is all right. Go ahead now, please, ma'am. A "Although the members of the School Board have sincere differences of opinion on certain aspects of the pending suit, we think it highly significant that the Board is unanimous in its conviction that the maintenance of quality education and a stable system of public schools for all students dictate that we go forward with this motion. Richmond, Chesterfield and Henrico are one community and every child within the community has the right to participate in a system of quality education. Each segment of the community can make a real contribution to the ultimate goal of quality education; so the entire area can benefit from the enrichment, economy and efficiency provided by a regional system.

"It is the considered judgment of the School Board, supported by the opinion of its counsel that the filing of the

motion will not prejudice its present appeal; does not in any limit the flexibility of the School Board to re-evaluate its duty in light of the forthcoming decisions of the United States Supreme Court; and would very probably minimize the amount of bussing of Richmond [M-119] students which might otherwise be required.

"Our appeal:

"Nothing in the joinder motion will prejudice, hinder or delay the vigorous prosecution of every right reserved by the appeal from the District Court's decision. On the one hand the Board has been steadfast in pursuing every right on appeal. On the other hand we are pledged to employ no delaying tactics before any forum. As the District Court previously made perfectly clear, the proceeding for consolidation will in no way be allowed to delay the implementation of a unitary plan within the City of Richmond.

"Supreme Court Decision:

"The question of consolidation of school districts is not an issue in any of the cases presently before the United States Supreme Court. For this reason, we see nothing to gain by waiting for its decisions in these cases.

"Transportation:

"The degree of transportation of pupils under the present plan was brought about by adherence to the specific guideline of the Court of Appeals for the Fourth Circuit requiring the utilization of transportation [M-120] as one of the means of desegregating the schools. If the United States Supreme Court decides that transportation of pupils is not a required means of desegregation, nothing in the motion commits the School Board to utilize transportation

as a desegregating tool. However, if transportation is approved as a required means of desegregation, a tremendous increase in crosstown transportation could be required within the City if the unitary plan related only to the City. In a consolidated system, much of the crosstown transportation could be eliminated in view of the proximity of many of the county schools to the city limit.

"Timeliness of Motion:

"From the statements made by members of Council, it is apparent that several of them were thoroughly in accord with the principle of joining the counties but were concerned about the timing of the filing of the motion. As to timing, we should like you to know the advice which the School Board had from its counsel on this precise point.

"It is their opinion that time is of the essence in filing this motion, for it is highly advisable that we preserve our rights to proceed under the existing constitutional and statutory scheme for [M-121] consolidation of school divisions by the State Board of Education. The surrounding counties have known since July of this year that a motion of this type was forthcoming, and a move by the counties to have the General Assembly repeal or change the existing statutes can reasonably be anticipated during the special session beginning January 6. Therefore, in order to forestall the effect of any action by the General Assembly, we must have our plea for consolidation pending in Federal District Court and the issues clearly defined prior to January 6. From the initial filing of the motion for joinder in July until November 3, the proposed new Constitution was before the voters. It contained such a far-reaching advance for public

education that the Board was loath to take any action which might prejudice its passage. Thus, the School Board intentionally delayed filing the motion until November 4 and set the hearing on the motion for the earliest date available from the Court, November 18. This timetable will allow for action on the motion by the Court and, if such action is favorable, the filing of an amended complaint by the plaintiffs prior to the time when the burden of preparing for the special session falls upon the Attorney General and counsel for the counties who are members of the General [M-122] Assembly. Such counsel are usually granted delays in trial schedules from a month prior to until a month following the session. The necessity of having the School Board's claim pending in Court when the General Assembly meets was the most compelling reason for filing the motion at this time.

"Conclusion:

"We hope you understand and respect the reasons for our decision. While we do not consider it imperative that Council and the Board agree on every issue, we do want, and must have, communication with each other and we must continually strive for the best in education for the children of Richmond.

"Sincerely yours, Virginia A. Crockford."

Q Thank you, Mrs. Crockford.

Now, may I ask you what it was that the School Board hoped to gain from the appeal that it was vigorously prosecuting? A Well, you probably recall better than I that there were a number of things that had not been clarified as far as the Court was concerned. Right offhand I can't remember them, but the issues were not quite as clear and

since then, of course, we have had the Supreme Court decision which has spelled out those.

[M-123] Q Well, you were hoping not to have to engage in the total desegregation of the schools through the process of bussing by appeal, isn't that what the Board wanted? A Not necessarily.

Q Well, does your letter advise City Council that if the Supreme Court indicates what you refer to as being pending comes down and says that the transportation of pupils is not required as a means of desegregation, did you not advise City Council that you were not committed to the use of transportation in the City of Richmond as a tool to desegregate the schools? A Well, that is more or less what the letter says, yes.

Q Well, does that accurately reflect the attitude of the School Board at that time? A At that time, yes.

Q All right.

Now, Mrs. Crockford, let me ask to look again, if you will, at the paragraph, paragraph four of Richmond-Chesterfield-Henrico being one community. Each segment of the community can make a real contribution to the ultimate goal of quality education. So that the entire area can benefit from the enrichment, [M-124] economy, and efficiency provided by a regional system.

Bearing that in mind, could you answer the question which you have declined to answer previously about the joinder of the three school systems, if their racial composition were, as I described it? A I am not sure I know.

Q When did Richmond, Henrico and Chesterfield become one community in the eyes of the Richmond School Board? A Can we have a more economical system, better educational program, is that what you are asking?

Q No, ma'am. I am asking you whether this statement about the one community and the quality education that can be had by the joinder together was influenced by the decision of this Court that Richmond must desegregate its schools? A Pardon me, but I think more than that, you know, Richmond, Henrico and Chesterfield have always cooperated in certain matters as far as schools are concerned.

Q Yes, ma'am. A We have had some joint programs.

Q Yes, ma'am. A And we have had some School Board members [M-125] who had always felt that we would have a better educational program if we had a joint program completely with the counties. And I have no doubt but what if one of the Board members who advocated this was sitting in this chair they would have answered, yes, to your question. So I think that in many respects some of us would go a long ways to having joint enterprises as far as, and would have for years and years, as far as the joint educational program because there are many things that you can do more economical and provide better services if you do them over the broad area than if you try to set forth in just one small locality.

Q Did the School Board of the City of Richmond ever request the State Board of Education to consolidate Richmond, Henrico, and Chesterfield into one school district? A No, we did not.

Q Is the first time that this thought came to light in the minutes of the Richmond School Board? A It may be the first time it has been in the minutes, but, you know, School Boards discuss quite a few things that never get into the minutes. This was discussed by the Richmond

School Board a number of times prior to it ever receiving any formal action.

[M-126] In fact, there was an editorial a number of years ago in the PEA Journal written by Dr. Bob Williams in which he advocated a regional system. The School Board members from the areas, in fact Richmond, Chesterfield and Henrico and Hanover all met just—I guess a couple of years ago to try to figure out ways we could work together. So we are not as foreign in our cooperation as it may seem.

Q You say you met to come up with ways that you could work together, but you didn't have a meeting dealing with the consolidation of these three school divisions into one division, ma'am? A No.

Q No.

And after Dr. Williams' editorial, you did not even then have the State Board of Education consolidate school districts? A No, we did not, because it seemed rather hopeless. I personally felt that we would not get a very good response from the counties if we requested it.

Q Well, Mrs. Crockford, was response from the counties necessary? Don't you think the State Board of Education has the power to do it by themselves? A Yes, they do, but as you well know, the [M-127] State Board does not do this in the face of opposition from the counties. So it would take a request from the School Boards from the different areas in order to get it done.

Q It would take a request from the local School Boards to get it done? A That's right. And I have not seen any School Board members from the counties who wish to go that far.

Q I am sorry. A I was going to say in the face of

that, I could not see the State Board acting responsibly on it.

Q All right.

What did you mean in the fifth paragraph of your letter when you said, "That your appeal does not limit the flexibility of the School Board to re-evalutate its duty?" What do you mean by "re-evaluating your duty?" A Wait a minute now until I find it. Yes, I have found it.

Q That paragraph next to the bottom. A I am trying to go back and think what they were thinking about. As you know, letters get cold [M-128] the same as your notes get cold sometimes. I suppose what we had in mind is it would not—that we could change plans in the City of Richmond in case things did not—the Supreme Court changed.

Q All right.

You refer in the concluding paragraph of your letter that you don't think it is imperative that Council and the Board agree on every issue.

Do you know what the position of City Council is with respect to this action? A At the present time?

Q Yes, ma'am? A No, sir, I do not.

[M-139] * * *

Cross Examination

By Mr. Lucas:

Q Is the Richmond School Board, since you have been there, at least, felt a responsibility to comply with the policies and procedures established by the State Board of Education? A Very definitely.

Q Had the State Board of Education directed the Richmond School Board to take certain actions with respect to

the desegregation of its schools, would that have been complied with by the Board? A Would it have been?

Q Yes. A It very definitely would have been.

Q Has the State Board of Education taken [M-140] any affirmative steps with respect to the Richmond School Board to require you to desegregate the schools that you can recall during your time on the Board? A Not to my knowledge. We were required to operate under the pupil-placement.

Q Under the pupil-placement law, the actual ultimate responsibility for the assignment of each child in the Richmond school system was vested in the State Board of Education or the Pupil-Placement Board? A That is correct.

Q Is that correct? A That's right.

Q Under regulations adopted, procedures adopted by the State Board of Education?

You have to speak so we can get it on the machine. A That's right.

Q And the same answer would be true with respect to the tuition grant payments that you spoke of with Mr. Gray? A That's right. We had no choice.

Q Richmond has received students pursuant to its tuition grant program administered by the State Board of Education from Chesterfield and Henrico County [M-141] in the past, has it not? A I believe that is correct.

Q And Richmond students, do you know, have Richmond students gone out to those counties? A They did, yes.

Q There also have been Richmond students that have

gone to private academies as reflected by the minutes of the Board that Mr. Gray showed you? A Very definitely.

Q I believe he showed you some minutes bearing the date of November 21, 1967, that is page 164. I have marked two pupil scholarships. Would you tell me what school they show that they went to? A Prince Edward.

Q Do you know where that is? A It is in Farmville.

Q Does it show Prince Edward School Foundation, 121 East Third Street, Farmville? A Farmville, that's right.

[M-144] * * *

J. G. BLOUNT, JR.

was called as a witness, and having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lacy:

Q Mr. Blount, will you please state your full name and occupation? A J. G. Blount, Jr., Assistant Superintendent for Administration, Finance, State Department of Education.

Q How long have you been assistant [M-145] superintendent? A Since 1961.

Q Will you please state your experience with the State Board of Education or State Department of Education prior to becoming assistant superintendent? A Assistant supervisor for accounts and records, 1931 to 1948. Supervisor for accounts and records 1948 to 1952. Director of finance, 1952 to 1961 and assistant superintendent, 1961 to date.

Q Have you been a member of any societies or associations? A American Association of School Administrators, Virginia Association of School Administrators, Association of School Business Officials of the United States and Canada, Virginia Association of School Business Officials, School Finance Officers of the Southern States and Educational Association.

Q Have you testified in several cases as a witness concerning the administration and financing of public schools in Virginia, Mr. Blount? A Yes.

Mr. Lacy: I would like to offer Mr. Blount as an expert.

[M-147] * * *

Mr. Lucas: We have no objection.

The Court: He is qualified; even with objection, he is qualified.

Direct Examination (Continued)

By Mr. Lacy:

Q Mr. Blount, what is the structure of the public education system in Virginia? A Well, prior to July 1, 1971 we operated under the old constitution which provided for a State Board of Education which was charged with the general supervision of the school system.

The powers and duties of the Board under [M-148] that constitution were to divide the State into appropriate school divisions, to certify lists of qualified persons for the eligible lists of division superintendents, to adopt basal textbooks, adopt regulations governing certification, accreditation standards, to distribute full funds and specifications for school buildings.

After July 1, 1971, we operate under the new constitution which also places the general supervision of the public school system in the State Board of Education with duties and responsibilities comparable to those I have just read, but in addition, a very significant change in that, it requires the State Board of Education to adopt standards of quality for the several school divisions. They shall be prescribed from time-to-time by the State Board of Education subject to revision only by the General Assembly.

Q Mr. Blount, does the State Board of Education have the power to appoint superintendents? A Yes. They do have the power to appoint superintendents in one instance only, however. If the local School Board fails to appoint a division superintendent within 60 days from the date on which the vacancy occurs, the State Board of Education appoints the division superintendent.

[M-149] Q Now, Mr. Blount, what is the structure of the educational program on the local level? A On the local level under the old constitution you had a School Board that was charged, vested with the responsibility of operating, maintaining and operating schools as in contrast against the State Board responsible for school system.

The School Board has certain powers and duties to assign and transport pupils, to a point and assign teachers, select textbooks from the basal list adopted by the State Board, to select sites and provide necessary building facilities, provide for payment of teachers and other expenses out of funds appropriated by the governing body, and to make local rules for the conduct of students.

Under the new constitution the wording is also practically the same that the supervision of schools in each school division shall be vested in a School Board.

I would like to point out in both, both under the old constitution and the new constitution, the School Board does not have tax levying power.

Q Now, Mr. Blount, getting back to the duty of the State Board to divide the State into school [M-150] divisions.

Prior to July 1, 1971, was there any limitation on the State Board in this regard? A Yes, sir. The State Board in dividing the State into school divisions, they could not divide a city or county in the formation of a division, and a division must consist of not less than one county or one city.

Q Now, Mr. Blount, the City of Richmond and the counties of Henrico and Chesterfield are separate and distinct school divisions right now, are they not? A That is correct.

Q Do you know when those locales became school divisions? A Based on the only record that I know of that all three were listed as separate school divisions in the first annual report of the State Superintendent of Public Instruction were 1870 and 1871.

Q That is 1870? A 1870-71.

Q Now, Mr. Blount, if prior to July 1, 1971 the State Board had created a school division so as to include the school systems of two or more political subdivisions, what would have been the result? [M-151] A The School Board would continue to operate its own schools independent and separately of the other.

Q Would they have had a single superintendent? A With a single superintendent.

Q Who would have appointed the division superintendent? A The local School Boards would have appointed a superintendent except in the instance I cited earlier that if they failed to employ the superintendent within 60 days of the vacancy the State Board would appoint.

Q What body would have governed that school division, Mr. Blount? A The local School Board.

Q All prior to July 1, 1971? A Yes, sir.

Q Is that the division School Board? A The county or City School Board.

Q Would have governed its own separate system? A Yes, sir.

Q What would have been the relationship, Mr. Blount, between the school systems and the School Boards of these political subdivisions in this one division? [M-152] A Each School Board would continue to operate its own schools.

Q Has the State Board of Education ever created a school division consisting of two or more political subdivisions? A Yes, sir.

Q Mr. Blount, are those divisions set forth in State Board Exhibit Number 10? A Yes, sir.

Mr. Lacy: We furnished a copy of those to the Court.

The Court: Yes. Thank you.

Mr. Lacy: We will also give the Clerk a supplemental list.

The Court: All right.

By Mr. Lacy:

Q I believe State Board Exhibit 10 shows that each of the School Boards was separate, is that correct? A That is correct.

Q And ran their own school systems? A Yes, sir.

Q Mr. Blount, did the State Board ever refuse to create a school division consisting of two [M-153] or more political subdivisions when requested to do so by the School Board and governing bodies of the requesting political subdivisions? A None to my knowledge.

Q Have the School Boards of Richmond, Henrico, or Chesterfield, or any of them, ever requested the State Board to put their school systems into a common school division? A No, sir.

Q Assuming that the School Boards had requested this and the State Board had acted favorably upon their request prior to July 1, 1971, what would have been the result had he been placed in the same school division? A Each School Board would have continued to operate its own schools with a single superintendent working in the participating Board.

Q Now, Mr. Blount, drawing your attention to State Board Exhibit 10, from your experience with the State Board, in the State Department of Education, what reason did the local Boards list in the State Exhibit 10 give to wanting to be in the same division with another political subdivision? A Well, that is in practically every instance [M-154] it was due to the fact that they wished to share a superintendent and reduce the administrative cost for each locality.

Q Did the State Board ever dissolve any of those divisions listed in State Board Exhibit 10? A 17. 17 of them on request of the local School Boards and the local governing bodies.

Q I see.

And I notice that two more were dissolved? A Yes. Two were dissolved by virtue of the fact that the localities merged and became one political subdivision, that is the entire local governments merged into one political subdivision.

Q I believe those are Princess Anne and Virginia Beach and Hampton and Elizabeth City? A Right.

Q From your experience now, Mr. Blount, what reasons were given by these School Boards for wanting to have the divisions dissolved? A Well, on several occasions where there were two School Boards, one School Board would have more members on the Board than the other which meant that one Board could select the superintendent. And in other instances it was due to the fact that in our [M-155] opinion this locality wanted to have a full-time superintendent working in their own divisions and not have to share that person with another county or city.

Q Prior to July 1, 1971, prior to July 1, were there any provisions, statutory provisions, which would have permitted the merger of two or more School Boards when they were in a single division? A Yes. The General Assembly adopted or enacted section 22-100.1 through 22-100.12, I believe it was, which provided for a single School Board. I think it would be well to point out two of those sections.

When the State Board of Education has created a school division composed of two or more counties, of one or more

counties with one or more cities, the supervision of the schools in any such school division may be vested in a single School Board unless the conditions and provisions as hereinafter set forth in 22-100.2. How a Board establishes the word "may" is repeated. In other words, the steps towards such a single division action had to be initiated locally.

Q When you say locally— A Locally by the local Boards.

Now, I will detail that in just a moment.

[M-156] In this case the two localities would have to be placed in a single division by the State Board followed by a majority vote of both school boards. The next step would be the approval of the governing bodies followed by a request to the State Board for its approval.

Again, the action has to be initiated locally and had such action taken place, each locality would have been dependent on their own separate governing bodies for financial support.

Q Have there ever been any requests made of the State Board of Education to merge two School Boards into a single School Board, under this statutory authority? A No.

Q Has there ever been a merger such as the one you just described? A No.

Q Has the State Board ever promulgated rules and regulations pursuant to 22-100.8? A No.

Q In my examination I have tried to point out that I was speaking of prior to July 1, 1971. And I believe at its extra session the General Assembly [M-157] passed a statute or amended 22-30 which deals with the division in the State into school divisions.

Will you explain the role of the State Board in light of this new amendment? A Well, the General Assembly at its special session, special session 1971, well, first the constitution says that there should be created under conditions and criteria established by the General Assembly—

Q Talking now about school divisions, are you? A Yes, the school division; yes, sir.

The General Assembly at its special session adopted the following conditions. No school divisions shall be composed of more than one county or city. No school division shall be composed of a county or city to include one of the seven town school districts that were mentioned in the Act. So subsequent to July 1, 1971, every county and city and the seven town school boards mentioned in the Act were declared to be divisions.

The Act further provided that the State Board of Education could modify or alter such a division on the request of the local School Boards and the local governing bodies.

Q So the initiative still resided with the [M-158] local boards and— A And initiative still resides and at that time tax levying authority would still remain with the local boards participating in the single division.

Q Now, Mr. Blount, from your experience at the State Department of Education working with the State Board, since, I believe you said, 1941? A Prior to that.

Q Prior to that.

Is it your understanding that it was the interpretation of the State Department and the State Board that before two School Boards could be merged into one School Board, the initiative had to be taken by the localities, meaning the local School Boards and local governing bodies? A Yes, sir.

Q I believe you mentioned that every city and county at present is a separate school division, is that correct? A That is correct.

Q All right.

Is it your understanding, Mr. Blount, that school division lines have always been drawn along political subdivision lines in the State of Virginia? [M-159] A Yes.

Q Mr. Blount, would you take the State Board Exhibit and put it in front of you, please? A Which number?

Q 11. A Right.

Q Was this a report made to the State Board of Education in 1967? A Yes, sir.

Q And it is a report to the consolidation of school divisions? A Yes, sir.

Q Does it concern itself with the consolidation of small school divisions? A Yes, sir.

Q Would you please read for me on page two of that report starting with the paragraph headed "The problem" over until "recommendations" on page four? A Yes.

"The problem: One, how can the consolidation of small, inefficient and poorly supported school divisions into larger, more efficient and better organized units be brought about?

[M-160] "Two, would compulsory mergers of small school divisions instead of voluntary mergers as now permitted under section 22-100.1 of the Code of Virginia, be compatible with Virginia's historic concept of local control?

"Three, would not such merged school divisions remain fiscally dependent upon two or more political subdivisions, and if so, would not this present problems concerning fiscal

arrangements with reference to operational costs, capital outlay programs, and administration of the programs?

"The committee feels that a realistic plan for the consolidation of school divisions would provide for a greater degree of efficiency in a wider range of educational services than is now the case and would result in a more economical organization for public education in Virginia. If two or more school divisions, however, were consolidated into one as provided in section 22-100.1, of the Virginia school laws, the single School Board for that division would, of necessity, look to the two or more governing bodies for financial support. It would appear that the compulsory consolidation of functions of local government would need to have a degree of fiscal independence not available under present statutes.

[M-161] Q Excuse me, Mr. Blount, if you back up, I believe you skipped a sentence there. A Which one was that?

Q Start off with the paragraph, "It would appear." A "It would appear that the compulsory consolidation of School Boards not accompanied by a consolidation of all functions of local government, would need to have a degree of fiscal independence not available under present statutes.

"The committee recognizes the interdependence of neighboring political subdivisions, especially with reference to providing services including education to the larger community and made the observation that the enormous complexity of the many facets of these matters requires careful and detailed study."

Q Now, Mr. Blount, I believe the recommendation is that the State Board request the Governor to refer the matter to the Virginia Advisory Legislative Council for drafting of appropriate statutes, is that correct? A Yes.

Q Did the State Board follow the recommendations? [M-162] A The State Board recommended that it be referred to the Governor for such action as he might deem appropriate.

Q Did the State Board take any action in response to this other than recommending to the Governor in response to this report? A No, because of the constitutional study that was going on, a Commission be appointed by the General Assembly to study the consolidation of small divisions and therefore no action was taken beyond that.

Q In other words, the General Assembly was taking action on this at that time? A Yes. It was under consideration by the General Assembly.

Q Now, Mr. Blount, previously we have heard testimony concerning Fairfax City and Fairfax County. Will you please explain their educational structure? A Yes. Fairfax County is a separate school division with a School Board and a division superintendent. Fairfax City has its own School Board, its own superintendent. Fairfax City and Fairfax County have entered into a contractual agreement by which Fairfax County educates the children of Fairfax City.

Q Do you know approximately how many children, [M-163] school children, are in Fairfax City? A Around 6,000 to 6,100.

Q 6,000? A 6,000 to 6,100, yes, sir.

Q Do you have any indication that that contractual arrangement may be changed in the future? A This was along around May or June which were in correspondence with the local school board following the appointment of a new division superintendent of schools. And in

that letter it was stated that the new superintendent would devote a considerable amount of his time to research and planning for the ultimate operation of the schools of its own children by the City of Fairfax.

Q To go back one moment, Mr. Blount, to State Board Exhibit 11 which is the committee report? A Yes, sir.

Q Has the situation changed in regard to the inadequacy of statute since the extra session of the General Assembly? A No. No, it has not changed. The State Board does not have the authority.

Q On State Board Exhibit Number 11, Chesterfield and Colonial Heights, I believe, appear [M-164] in a single division. Can you explain the facts surrounding that particular division? A Well, originally Colonial Heights was an incorporated town in the County, but upon assuming the status of a city it was then required to have its own School Board. On request of the localities, both the county and the new city, the School Boards and governing bodies, the State Board of Education created a division consisting of Colonial Heights and Chesterfield, and that action was taken in 1948.

Q But the school systems and the School Boards were entirely separate and distinct? A Each board continued to operate its own schools with a single division superintendent.

Q And that school division has since then been dissolved, is that correct? A In 1961.

Q At the request of the localities? A Again at the request—it was included in the 17 that we referred to

earlier as having been dissolved at the request of the local School Boards and the local governing bodies.

Q Now, Mr. Blount, do you have a copy of State Board Exhibit 12? [M-165] A Yes, sir.

Q Will you please explain what that exhibit shows? A Distribution of operating local public school systems and number of pupils by size of system for the United States, fall, 1970. It records the total of 17,498 operating units of which 28 has 100,000 or more pupils.

Q Excuse me, Mr. Blount. When you say operating units you mean school districts or school divisions? A Units operating schools, yes.

Q Comparable to our school divisions? A Yes. 100,000 or more. There were 28 or .2 percent. But the 28 included Hawaii, District of Columbia, Peurto Rico, Canal Zone, Guam, and the Virgin Islands.

20,000 to 99,999, there were 163 operating units representing .9 percent.

Q I see.

Will you turn over now to the second page of that exhibit, please, sir, and tell us what that shows? A Yes, page two is the distribution of local [M-166] public systems and number of pupils by size of systems for Virginia in the fall 1970.

Here we had 29 systems that were reporting in this.

Q You now have more than that, don't you, Mr. Blount? A Yes. 100,000 or more, 1.8 percent.

25,000 to 99,999, were ten or 7.7 percent.

That would include Richmond and Henrico systems.

Q Well, will you turn over now to page three, sir? A Yes, sir.

Q What does that show? A Page three shows pupil enrollment, fall 1970. It lists the 12 largest systems.

Here, again, I am referring to operating school boards, operating schools.

Q In the State of Virginia? A In the State of Virginia.

Q Yes, sir. A With Fairfax leading with 133,021 pupils. That includes the approximately 6,100 pupils in Fairfax.

[M-167] Q Now, Norfolk is second largest? A Norfolk is second.

Q That has 55,000? A 55,739.

Richmond has 47,824.

Q That is fine. Thank you.

Now, Mr. Blount, I believe you mentioned earlier that local school boards cannot levy taxes. A That is correct.

Q To what bodies does the local school board look for its revenue to operate its schools? A It looks to the local tax levying body for local funds, to the State for State funds, and federal funds both direct to the locality and also through the State.

Q I believe in 1969—1970 was the last year for which the State Board has complete records of receipts by local school boards, is that correct? A That is correct.

Q What was the total amount of money received by the localities in 1969-1970 for the operation of their schools? A $871 million.

Q What portion of that money was received from the State? [M-168] A 250 million.

Q What percent is that of the 871 million? A The 250 million was 28.71 percent.

Q Of that 250 million, how much was disbursed under the rules and regulations set down by the State Board of Education? A 27 million.

Q And what percent does that bear to the 871 million dollars? A Three percent.

Q Three percent? A Yes, sir.

Q Now, when you say disbursed or when I asked you disbursed by rules and regulations, what do you mean by rules and regulations of the State Board? A Well, the Appropriations Act includes a number of items which are, which we are permitted to spend under rules and regulations by the State Board of Education. In other words, the distribution formula is not specified in the Appropriations Act.

Q Now, are these rules and regulations direct as to how you may spend or indirect? A Some of them are direct and some are indirect. The $27 million included $15 million that is [M-169] expended through our department and from federal funds under the Vocational Act. The Vocational Act requires or sets forth certain guidelines and requirements for both the federal dollar and the State dollar that matches it. So the $15,000 was—

Q $15 million.

A $15 million. Thank you. Was available under federal rules and regulations and the remaining 12 for those that were available under rules and regulations of the State Board.

Q And the General Assembly, does it set down the conditions under which the other money may be disbursed, the other $200-some million? A The $208 million was the basic State school aid fund and the formula is set forth in the Act.

Q All right, sir.

Of the total amount of receipts by localities in 1969-1970, what amount came from federal funds? A $91 million or ten and 47/hundredths percent.

[M-170] * * *

The Court: All right, Mr. Gravatt, do you have any examination?

Mr. Gravatt: No, sir.

The Court: Mr. McIlwaine?

Cross Examination

By Mr. McIlwaine:

Q Mr. Blount, can we define consolidated school divisions as school divisions comprising more than one county or city operating under one school board with one division superintendent?

[M-171] * * *

Cross Examination

By Mr. Lucas:

Q Do you know John F. Banks, sir? A Yes, sir.

Q What position does he hold? A Associate director of our division of secondary education.

Q I show you what has been marked as Plaintiffs' Exhibit 139 entitled "School Desegregation, Virginia and the Black Secondary School Principal." It is authored by John F. Banks, Associate Director of Secondary Education. Would you read the first page of that? A "In 1965, ten years after the 1954 Supreme Court decision, there were still 77 black secondary schools in 73 counties and 30 black secondary schools in 27 cities of Virginia. Each of these 107 black schools had a black principal.

[M-172] "Today there are only four counties in which the black secondary school plants are even used to accommodate all secondary students. And the number of black principals has dwindled to 17. The greatest change occurred in 1969 when school divisions either by Court order or apparently because of pressures from the Department of Health, Education and Welfare, went to unitary school systems. The usual pattern was to close or reorganize the black secondary schools. This meant in most instances a change in the status of the principal. Sometimes he was reassigned, demoted to an elementary or junior high school principalship. More often he was removed entirely from policy-making positions. Many reassignments were to the classroom. Often the black principal was given a pseudo promotion to the central office which in reality is only a dead end street.

"The impact of these changes is of particular concern because of this debilitating influence on educational aspirations in the black community. For years positions in teaching and administration represented a real opportunity to (upward mobile) aspiring young blacks. This was especially true in the south. If they are now to be denied one more

profession offering policy-making opportunities and social [M-173] status, the effect is bound to be damaging."

Q Go on, sir. A "Many influences which rallied school spirit and fostered a sense of belonging has been destroyed. The authority of the black administrator which once presented a final avenue of understanding, guidance and communication, is vanishing. Also, and most important, is the general loss of respect toward black leadership."

[M-180] * * *

Q I am directing your attention to Plaintiffs' Exhibit 119, State Board of Education minutes, . . .

[M-190] * * *

Q Directing your attention to the minutes of November 21, 1952, page 34 of the exhibit, would you read the regulation providing for attendance of children [M-191] in other schools, counties and towns? A "For the purpose of clarification and conformity with sections 22-193, 22-" I assume 194, it is not clear, "and 22-196, Superintendent Howard recommended the following regulations providing for the attendance of children in other counties, cities, and towns: Regulations providing for attendance of non-resident children.

"Provision for children to attend schools in other counties, cities and towns. The school board of a county, a city, or a town constituted and operated as a separate school district, may admit children of legal school age from another county, city or district to the public schools thereof in accordance with the following:

"One, children within the legal school age reading in one

county or city may attend the public schools of another county or city either on the prepayment of an annual tuition charge not exceeding the total per capita cost of education, exclusive of capital outlay and debt service for high school or elementary pupils of the county or city to which admitted, or upon the terms and conditions of any mutual agreement reached between the school boards concerned, but not in excess [M-192] of the tuition rate defined above.

"Two, children residing in other districts of the county or from another county may attend the public schools of a town constituted and operated as a separate school district either on the prepayment of an annual tuition charge not exceeding the per capita cost of education, exclusive of capital outlay and debt service, of the high or elementary schools attended, or upon the terms and conditions of any mutual agreement reached between the school boards concerned, but not in excess of the tuition rate defined above.

"Upon motion, duly made and seconded, the Board adopted the foregoing regulation and rescinded the present regulation as recorded on page 244 of Virginia school laws and regulations."

Q Thank you.

Directing your attention to the minutes of March 26, 1953 on page 36 of the exhibit, would you read the section under "Charles City?" A "Superintendent Howard presented resolution of the county school boards of Charles City and New Kent petitioning the State Board to constitute the two counties as a school division. The resolutions were submitted for information only and consideration [M-193] was deferred pending further information, in view of the fact that these two counties are currently in the

school division embracing the counties of Charles City, James City and New Kent."

Q Minutes of April 23rd, 1953, page 37 under the heading "New school divisions, establishment of." A "Allegheny County and Covington City—establishment of—school division. Effective July 1, 1953—in accordance with resolutions submitted by the school boards of Allegheny County and the City of Covington (established as a city of the second class on December 20, 1952) and on recommendation of Superintendent Howard, the Board, upon motion duly made and seconded, under authority of section 22-30, established the school division of the County of Allegheny and the City of Covington, effective July 1, 1953."

Q Page 38, top paragraph, I believe, reflects the same action with respect to Charles City and New Kent County under the same authority, same provision? A That is correct.

Q Directing your attention now, sir, to page 42, minutes of June 23rd, 1955, would you read the minutes beginning with "Purpose of the meeting?" A "The purpose of the meeting was to discuss [M-194] proposed procedures and policies to be followed for the session 1955-56 in light of the decree handed down on May 31, 1955 by the Supreme Court of the United States in the above-mentioned case.

"After mature consideration, upon motion duly made and seconded, the following policy was unanimously adopted, the Governor concurring:

"The problems created by the decision of the United States Supreme Court cannot be solved suddenly. The Court recognized that those responsible may well take into

account the public interest in elimination of existing obstacles in a systematic and effective manner. The Court further recognized problems related to administration, physical conditions of school plants, the transportation of pupils, personnel, revision of school districts and attendance areas. Attention was directed to the possible necessity for the revision of State and local laws.

"Although the United States Supreme Court placed on the school authorities the responsibility for assessing and solving the problems in .ccordance with the views expressed by the Court, the State Board of Education and the local political subdivisions cannot initiate a plan to accomplish an orderly and logical [M-195] adjustment within the law until the Geenral Assembly has enacted appropriate legislation. The State Board is of the opinion that hasty action could well result in serious damage to the public school systems."

Q Read the top of the next page, please. A "It has not yet been possible for the committee on public education to propose—"

Q Excuse me. This is continued? A Continued, yes.

Q Go ahead. A "It has not yet been possible for the commission on public education to propose to the General Assembly"—the word is not clear there, "proposed the General Assembly to enact appropriate legislation which will enable the State Board of Education and the local school authorities to adjust to a new and different basis for the operation of public schools.

"Meanwhile, local school authorities are faced with the

necessity of completing the formulation of plans for the coming school session.

"In view of these facts and circumstances, the Governor and the State Board of Education hereby declare and adopt as the policy of this Commonwealth that the State Board of Education will continue to administer [M-196] its functions, in cooperation with the local school authorities, to the end that the public schools of Virginia open and operate through the coming school session as heretofore."

Q The resolution, sir, refers to change in local laws, revision of State and local laws. Do you know of any change in the State law provided for integration of the schools or change in any policy of the State Board of Education which required action to integrate the schools following this resolution? A I believe that resolution speaks for itself. It refers to a commission that was studying the matter and the Board stated its action.

Q Do you know of anything since then that has come to your attention that the State Board adopted a requirement that schools, or as a policy, that schools integrate following the decision in Brown versus Board of Education? A I don't know of any adopted policy that authorized the school to integrate.

Q Do you know—A May I finish my answer, sir?

Q Surely. A I do know that the State Board of Education [M-197] has conformed with the provisions of the Constitution of Virginia, the statutes of Virginia, and subsequently when, I think it was in 1965, probably we were operating under the compliance agreement.

Q Did nothing between then and 1965 except follow the laws, perhaps, of the State of Virginia, is that right? A That is correct, sir.

Q Directing your attention to the meeting, it is not clear as to the month, the 13th, 1955, page 72 of those minutes, page 45 of the exhibit, would you read the paragraph that is entitled "Statement on Report of the Commission on Public Education."

Would you read the fourth paragraph, please, sir? A "The value of the amendment of section 141 in connection with the problems arising from the May 17, 1954 decision of the Supreme Court of the United States will depend upon the laws enacted by the General Assembly following the amendment. The Board strongly favors the proposals of the Commission on Public Education providing for a high degree of local autonomy in the operation of the schools. The Board favors the authorization of the use of assignment of [M-198] pupils and teachers as proposed. It favors the principles stated in the report of preventing enforced integration of either white or Negro pupils in mixed schools against the will of their parents."

DISTRICT COURT PROCEEDINGS OF SEPTEMBER 7, 1971

[N-4] * * *

PROCEEDINGS

(September 7, 1971) (Tuesday at 10:00)

The Clerk: Civil Action 3353-R, Carolyn Bradley et al. versus The School Board of the City of Richmond, Virginia, et al.

Continued from Thursday.

(Mr. Blount resumed the stand.)

[N-17] * * *

Cross Examination

By Mr. Little:

[N-18] * * *

Q Mr. Blount, are there any State Board regulations where a school division consists of more than one political subdivisions which would prohibit the transfer of pupils between the two political subdivisions encompassed within one school division? Are there any State Board regulations which prohibit that? A I do not know of any regulation that would prohibit the exchange or transfer of pupils on a tuition basis.

[N-19] Q Are you familiar with section 22-115.29 of the code? I will give you a copy.

May I approach the witness?

The Court: Yes.

The Witness: Yes, that has to do with the State and local scholarships for education of children.

By Mr. Little:

Q Yes, sir.

Q And if you come down in, is it not fair to say that—would you read that into the record, please, sir, that is the policy of the Commonwealth? A Read that paragraph?

Q Well, the whole section, that's right, sir, 22-115.29 A "Policy of Commonwealth; findings.

"The General Assembly, mindful of the need for a literate and informed citizenry, and being desirous of advancing the cause of education generally, hereby declares that it is the policy of this Commonwealth to encourage the education of all of the children of Virginia. In furtherance of this objective, and to afford each individual freedom in choosing public or private schooling, the General Assembly finds that [N-20] it is desirable and in the public interest that scholarships should be provided from the public funds of the State for the education of the children in non-sectarian private schools in or outside, and in public schools located outside, the locality where the children reside;"

Q All right, sir.

So there was an avowed statement of policy of the Commonwealth encouraging students to go to schools in other than the locality in which they resided, is that true? A It is providing it makes provisions for that, yes, sir.

Q All right, sir.

That was adopted when, sir, looking down at the bottom, do you recall? A 1960, chapter 448.

Mr. Little: May I approach the witness?

The Court: Yes.

Does counsel know what you are showing him?

Mr. Little: Yes, sir. This is referring to Article Five under Title 22 of the Code dealing with 22-100.1 and the section goes up through .12.

[N-21] By Mr. Little:

Q Coming over to 22-100.18, [sic] if you will, Mr. Blount, I believe you testified that that provides that the financial plan—by the way, this section, sir, deals with boards or divisions comprising two or more political subdivisions, does it not? A Yes, sir.

Q I believe you stated that as of this date the State Board of Education has not prepared any rules or regulations for the operation of such a division? A That is correct.

Q But you had previously prepared detailed recommendations and regulations for the operation of joint schools shared by one or more, two or more political subdivisions, had you not? A That is correct.

Q Coming down to section 22-100.9, dealing with expenditures for capital outlay purposes incurring indebtedness for construction of buildings, does that not provide that in such a school division as we are discussing here, that local operating schools as well as expenditures for capital outlay purposes would be shared on a pro-rata basis in a subdivision such as [N-22] this or in a school divisions such as this? A Once they have been made available by the independent governing bodies that have the authority to appropriate funds, yes, sir.

Q Right, sir.

When that status [*sic*] first was enacted, did it include operating expenses as well as capital outlay items? Do you

recall, Mr. Blount? A I do not recall the various steps in the amendment as to the effective date.

Q All right, sir.

The State Board or Department of Education has never recommended the repeal of either of these two sections that I have referred you to, have they? A No, sir.

Q If you come back over to 22-100.1 as it existed prior to July 1st of 1971, it was discretionary in such a school division consisting of more than two or more political subdivisions as to whether or not there would be one school board or more than one, was it not? A It was discretionary on their part to initiate the action.

Q That's right, sir. [N-23] A Yes.

Q But it was also discretionary as to whether the political subdivision comprising this school division wasn't to have one school board or each wanted to retain their separate school boards, was it not? A It was discretionary on their part to initiate change locally.

Q What change was made in that as of July 1st, 1971? A Well, basically there is no change as far as the action to be initiated locally is concerned. The General Assembly in special session established conditions and criteria for school divisions in the State, and I have previously testified—

Q No, I meant, sir, with respect to the School Board, in other words, is it not true that after July 1st, 1971, if political subdivisions got together and formed one school division, that it was mandatory that they have one school board as opposed to several? A If they operate under the amended section, the local School Boards may initiate

action to have a single School Board. It requires the approval of the School Boards and the governing bodies followed by [N-24] submission to the State Board of Education for its approval.

Q Mr. Blount, I don't mean to press it unduly, but my point is that the statute used to say, "It may be vested in a single School Board," and now it says, "It shall be vested in a single School Board," does it not? You can look at the Code. A Yes, that is true, but the action is still voluntary on the part of the local School Board.

Q All right.

([N-24] * * *

Q Coming, Mr. Blount, to Article Eight, section five of the Constitution, do you have a copy of the Constitution before you? A Yes, sir.

Q Let me read you one phrase in there. This is Article Eight, section five, subparagraph A, where it says the powers and duties of the State Board of Education shall be as follows:

Then we have this phrase, "Subject to such criteria and conditions as the General Assembly may prescribe." That is the phrase that I want to draw your attention to, if I could. A Yes, sir.

Q Did the commission on Constitutional revision recommend this language? [N-25] A No, sir.

Q The commission on Constitutional revision did not put any subject to criteria established by the legislature in there under your power to create school consolidation, that's right? A That is my understanding, yes, sir.

Q Right, sir.

Did the State Board recommend that this phrase "subject to criteria established by the legislature," be put in Article Five, section eight? A No, sir. This was legislative action.

Q That was legislative action? A Yes, sir.

Q You were a party to some of the discussion regarding the changes in this article of the Constitution, were you not, you and Mr. Wilkerson? A Yes, sir.

[N-26] * * *

Q In these discussions that you said you participated in with Mr. Wilkerson when the legislature was reviewing the recommendations of the commission on Constitutional revision and making such changes, is it not fair to say that they were conscious that whatever language was put in this article could have an effect on [N-27] federal Court suits? A I would assume that they would have not only these facts but any other facts in mind when they were considering.

Q Certainly. Certainly that is relevant? A Yes. Not limited to those, though.

* * *

Q Coming to section 22-30 dealing with the power and duty of the State Board of Education to establish school divisions throughout the State, the powers of the State Board were limited, somewhat, by this most recent amendment, were they not? A Yes, sir.

[N-28] Q In what particular were they limited? A Well, prior to July 1 the State Board could have placed two counties or a county and a city in one position.

Q All right, sir. A With one superintendent, but still operating with separate school boards.

But subsequent to July 1, the State Board could not combine two counties into one division. Each county and city having been established as a division; however, it did provide that an agreement, the State Board could, and that comes back to what I was trying to say a minute ago—

Q I knew you would get it in. A —in section five, section A, that part of the criteria and condition was that voluntarily on the local initiative the State Board could approve it.

Q All right.

In other words, prior to July 1st, 1971, the State could have made a school division out of Richmond, Henrico and Chesterfield, one school division, right? A It could have made a division of Richmond [N-29] City, Henrico, and Chesterfield, but it would have had one superintendent.

Q All right, sir. A But separate School Boards and separate tax levying bodies.

Q That's right, sir. But it could have been one school division, right? A As I just described it, with the single superintendent.

Q Right, sir.

But the State Board could have done that prior to July 1st, right? A It could have made a decision under the conditions I have described.

Q But under 22-30 as revised it couldn't do it today, could it? A Except where it is voluntary agreement as provided in that section of the Code to which you refer.

Q You recall, I think it was on Thursday, that Mr. Gray read into the record or had Mrs. Crockford read into the record, a letter that Mrs. Crockford wote Mayor Bliley. Wee you in here at that time? A I was in here for part of Mrs. Crockford's [N-30] testimony, but not all of it.

Q Right, sir.

Let me read you this sentence.

"The surrounding counties," this is a letter applying to Henrico and Chesterfield, "have known since July of this year that a motion of this type was forthcoming and a move by the counties to have the General Assembly repeal or change the existing statutes can reasonably be anticipated during the special session beginning January 6."

That prediction came true with respect to 22-30, did it not, sir? A Yes, sir, I think so.

[N-31] * * *

Cross Examination

By Mr. Gray:

Q Mr. Blount, if you would refer, please, sir, to State Board Exhibit Number 10, I ask you if in all of the minutes that you have been asked to read with respect to the creation of a single division out of one or more, two or more political subdivisions, if all of those creations were set forth in State Board Exhibit 10? A Yes, sir.

Q And was each of them brought about at the request of the respective local School Boards? A Yes, sir.

Q And in each case did the local jurisdictions retain their separate School Boards and operate their own schools separate and apart from the county with which they were joined as a division? A Yes, sir.

Q And in each case did the local jurisdictions retain their separate School Boards and operate their own schools separate and apart from the County with which they were joined as a division? A Yes, sir.

Q So that the only legal effect of the [N-32] consolidation of one or more counties into a—or one county and a city—into a single division was that they were administered by a single division superintendent? A That is correct.

Mr. Gray: If Your Honor please, I previously asked the Court to take judicial notice of the fact with respect to Charles City and New Kent. I would like permission now to file as our exhibit 26, and I will get it later, the facts with respect to Essex and Middlesex Counties which were in a single division, both of which had cases pending before this Court. I would like to file with the Court the complaints in each case which allege that the School Boards have, Middlesex and Essex in each case, has exclusive control over the schools in their particular jurisdiction, the answers and the order of the Court directing the operation in the schools in the individual counties. The pleadings will reveal that Eldon Christopher was division superintendent of schools for both of the counties.

The Court: You may file that.

By Mr. Gray:

Q Mr. Blount, do you have any general understanding as to how the process of integration in [N-33] Virginia has proceeded in comparison with other southern states? A We feel that Virginia's desegregation has been a progressing procedure and I would say without specific statistics that we feel that we are ahead of the other southern states.

Q During the period, let's go back to 1952 through 1969 and '70—may I approach the witness, Your Honor?

The Court: Yes, indeed.

By Mr. Gray:

Q What has been the attitude of the state insofar as financial assistance to public education is concerned during the period of desegregation? A It has been a consistent increase in the State funds for the support of public education.

Q What was the amount of State money distributed for public education, and we are talking now about elementary and secondary, what was the total amount of State funds distributed during the year '52-'53? A 1952-'53 we reimbursed localities $41,986.401.

Q Now, you have indicated that it has progressively increased. What was the amount in '69-'70? [N-34] A $250,101,997.

Q What is the per capita cost of operation per pupil in ADA based on local expenditures for '52-'53? A $171, per pupil.

Q What was it in '69-'70? A $644 per pupil.

Q What was the average annual salary of all instructional personnel in '52-'53? A $2,901.

Q In '69-'70? A $8,351.

Q And the average salary of a classroom teacher for those two periods? A 1952-'53, $2,824. 1969-'70, $8,070.

Q So that from a financial standpoint, the state has placed an ever-increasing role in appropriating ever-in-

creasing amounts of money for public education? A That is correct.

Q Now, one of the things that has been learned and has been testified to in this case, Mr. Blount, is the fact that particularly with respect to disadvantaged children, the earlier you can reach them, and begin their education, the better chance you have to remedy some of their shortcomings. Has the State of [N-35] Virginia taken any role in this phase of the educational process? A Yes. In at least two areas.

In the kindergarten program it has permitted kindergarten program children attending those programs meeting certain eligibility requirements and standards, they may participate in the distribution of State school funds in the same manner as the other grades.

In special education, some of our special education funds can be expended for children who are pre-school age.

Q When does the kindergarten program— A I think 1966, if I remember correctly, when they introduced the principle of kindergarten and then indicated two years later that they would make funds available.

Q And the funds were made available in such a manner that if a local School Board instituted a kindergarten program they received reimbursement just as though it were any other grade in school, is that correct? A It has been operational with the local School Boards and State funds are available if they accept that option.

[N-36] Q All right, sir.

Now, Mr. Blount, Mr. Little asked you about the recommendation of the Code commission with respect to— recommendation of the commission on Constitutional revision with respect to the changes in the Constitution.

You indicated to him that their recommendation with respect to the power to be given the State Board of Education insofar as consolidation of school districts is concerned, were not followed in exactly the precise manner that the commission recommended.

When did the General Assembly change those recommendations? A It was at the very beginning of that special session, if I recall correctly.

Q Special session in January, 1969? A '69.

Q January, 1969? A That's right.

Q All right, sir.

Now, Mr. Blount, I am going to ask you, if you will, please, sir, to read from the report of the commission on Constitutional revision under date of January 1st, 1969, the report to the Governor and [N-37] to the General Assembly of Virginia, to read from page 265 of the commentary relating to Article Eight, section five. Read the portion which I have underlined, sir. A "Under the present Constitution, a division is an administrative unit to the extent that it is under the supervision of a single superintendent, otherwise the school system is divided into counties and cities, each of which has a separate School Board and a separate fiscal structure. Under existing legislation the State Board of Education may consolidate two or more counties, cities, or counties and cities, into a single elementary school division, but they will remain separate fiscal units with separate School Boards unless the affected governing bodies agree to establish a single School Board. In practice, no such agreement is ever reached and efforts to persuade the General Assembly to effect consolidation of school divisions has never succeeded.

"The commission is convinced that fiscal consolidation of some school divisions is necessary to efficient operation and to the maintenance of educational programs of acceptably high quality. The small size of the student population of some cities and counties makes it impossible to provide the necessary facilities and [N-38] breadth of offerings except at an exhorbitant cost per pupil."

Q Mr. Blount, during your tenure with the State Board, have there been Boards of Education of Virginia who were anxious to consolidate school divisions? A Well, there have been discussions with several local School Boards who have indicated an interest in this section of the Code that would permit it, but no action has been taken in that respect.

Q Why hasn't the State Board of Education gone further than to just create a division with a superintendent? Why haven't they put them together to operate as a single unit with a single School Board? A I previously testified that they do not have that authority.

Q And that has been the administrative interpretation of Virginia law during your tenure? A Yes, sir.

[N-42] * * *

Recross Examination

By Mr. Little:

* * *

Q One other question, sir. Now, this section 22-30 that you and I discussed earlier, that was amended while this suit was in progress, wasn't it? A It is my understanding, although I don't have the exact dates, it is my understanding that it was during that time, yes, sir.

[N-48] * * *

WALTER CAMPBELL

was recalled as a witness and, having been previously duly sworn, was examined and testified upon his oath as follows:

Direct Examination

By Mr. McIlwaine:

Q Dr. Campbell, I believe you have testified that you are the division superintendent of schools of Henrico County? A Yes.

Q And when did you become the division superintendent? A July 1, 1969.

Q And when did you have your first contact with representatives of the Department of Health, Education and Welfare concerning the operation of Henrico Schools under the Civil Rights Act of 1964? [N-49] A I received a telephone call from the Office of Civil Rights stating that Dr. W. Kenneth Haddock would like to visit our school system on November—on October 16.

Q And did he subsequently make that visit? A Yes, he did.

Q And what happened on that occasion? A Dr. Haddock asked a number of questions about the plan that had been adopted by the School Board prior to my coming here. This information was given him.

Then he wanted to do some visiting, particularly in the Central Gardens school area. I took him to visit the school. We did make a very thorough visit of the entire school.

Q Did you supply Dr. Haddock with all the information

that he requested? A Yes, sir, we did. He left a questionnaire and we completed it and mailed it to him.

Q Did you thereafter receive a communication from HEW following that visit? A On November 28, 1969 I received a letter from Dr. Severinson, Regional Civil Rights Director.

Q Was that letter addressed to you? A Yes.

[N-50] Mr. McIlwaine: If Your Honor please, we would like to have this correspondence introduced, this letter, as Henrico Exhibit 26-A.

The Court: So ordered.
You will remember the rule about the list?

Mr. McIlwaine: Yes. We will provide a list, Your Honor.

By Mr. McIlwaine:

Q Dr. Campbell, would you read that letter, please? A "Dear Mr. Campbell: Thank you for your cooperation extended to Dr. W. Kenneth Haddock, of my staff during his visit to your school division on October 16.

"According to his report, you are now operating a unitary, non-racial school system in which no schools are racially identifiable. You, your School Board, and your staff are to be commended for the leadership you have shown in meeting the provisions of Title Six of the Civil Rights Act of 1964 and, even more important, providing an equal educational opportunity for all of the students in your school division.

"We note that Central Gardens appears to be moving in the direction of becoming an all-Negro [N-51] school, owing to the racial composition of its attendance zone. Please keep us informed of steps you may take to avoid the

possibility of this school becoming re-segregated in both student body and faculty. School Boards and administrations have a continuing responsibility, once a school division has been desegregated, to maintain it as such."

Q And following receipt of this communication, Doctor, what was the next contact you had with representatives of HEW? A The next contact in this context was that we received another telephone call from Dr. Severinson stating, "Mr. James Wego of her staff would like to visit the school system on November 5, 1970."

Q Did Mr. Wego make that visit on that date? A Yes, he did.

Q And did he inspect the schools as Dr. Haddock had before him and review the school system? A Yes. He left certain questions for me to find out the data and forward to him. Then he wanted to visit around, particularly the Central Gardens school, and we made a very thorough visit there.

Q Following Mr. Wego's visit, did you thereafter receive a further communication from the [N-52] regional office of Civil Rights? A I received a letter from Dr. Severinson dated December 10, 1970.

Q That letter is addressed to you, is it? A Yes.

Mr. McIlwaine: If Your Honor please, we would like to have this marked Henrico Exhibit 26-B.

The Court: So ordered.

By Mr. McIlwaine:

Q Would you read that letter to us, Doctor? A "Thank you for the courtesies extended to Mr. James Wego of my staff during his recent visit to your school division.

"Mr. Wego's report indicated that your division has operated in accordance with your 1969-'70 terminal desegregation plan for the past year. Furthermore, he reported that you have reopened the formerly all-Negro schools, closed as a part of your terminal plan, as desegregated facilities.

"The Central Gardens Elementary School continues to house a virtually all-Negro student body but does have a substantially desegregated faculty which is predominantly white. It is my understanding that due [N-53] to the division's growth patterns in both student population and building construction, there is a likelihood that some redistricting of school zones will take place next year. We would like to take this opportunity to call your attention to the division's continuing responsibility to utilize every feasible means to further remove the racial identifiability of the Central Gardens student body and to prevent this school from becoming all Negro, with reference to the student body. The redistricting of school zones may well allow for substantial desegregation of this particular school. Please keep our office informed of any future action which may have Title Six implications."

Shall I go ahead?

Q Yes, sir, if you will. A "Our concern which we share, I trust, is the small number of minority group professional staff in your school system, approximately four percent. We urge you to actively continue to recruit and employ minority group staff at all levels of responsibility.

"Based on our findings, your school division is eligible to submit HEW Form 441, assurance of compliance, copies of which are enclosed. Upon proper action by your School Board in the return of the forms to [N-54] our office, we shall immediately make the change in your compliance

status. Form 441 will serve as a satisfactory assurance of your division's compliance with the non-discrimination requirements of Title Six. The assurance accordingly provides the basis for approval of applications and for payment of federal financial assistance.

"This office wishes you well as you endeavor to bring about quality education in Henrico County."

Q In returning to the second paragraph, Doctor, in which Dr. Severinson points out that you had reopened certain formerly all-Negro schools that were closed as part of the terminal desegregation plan, do you know what schools Dr. Severinson was referring to? A Yes. When I assumed the superintendency, these schools were closed. That was Henrico Central and Fair Oaks and Virginia Randolph High School and Virginia Randolph Elementary School.

Q And is it your understanding that they had been operated as freedom of choice facilities prior to their closure? A Yes, that is my understanding.

Q And were they all-Negro schools when they were closed? [N-55] A I believe they were. The enrollment was rather small in all of them at the time they were closed, but I believe they were still all-Negro student body.

Q Closed as a part of a terminal desegregation plan that had been submitted to HEW and approved prior to your becoming division superintendent of schools? A Yes.

Q And during the school year 1970-'71 they were reopened as desegregated facilities? A Yes.

Q Now, did you subsequently submit the HEW 441 form referred to in the letter of December 10? A Yes.

Q And what was the next communication you received from HEW after that, Doctor? A On January 29, 1971, I received a letter from Dr. Severinson.

Q That letter addressed to you? A Yes.

Mr. McIlwaine: If Your Honor please, we would like to have this marked Henrico County Exhibit 26-C.

The Court: So ordered.

[N-56] By Mr. McIlwaine:

Q Would you read the first two and the last paragraphs of that letter, Doctor? A "This will acknowledge receipt of the HEW form 441, and the assurance of compliance with the Department of Health, Education and Welfare regulation under Title Six of the Civil Rights Act of 1964 executed on behalf of your school system.

"Information available in this office indicates your district has maintained full compliance in operation, and it appears that form 441 is a satisfactory assurance of your school system's compliance with the non-discrimination requirements of Title Six. The assurance accordingly provides the basis for approval of applications and for payment of federal financial assistance.

"We appreciate the effort and cooperation you have shown in assuring equal educational opportunity under Title Six. If there is any way we may be of further assistance, please do not hesitate to call upon us."

Q And thereafter, Dr. Campbell, what communication did you receive from the Office of Civil Rights of the Department of Health, Education and Welfare? [N-57] A The next communication from this particular office was dated April 20, 1971 from Dr. Severinson.

Q And will you read the first paragraph of that letter,

Doctor? A "As you may know, the Courts now generally hold that in order to be fully desegregated, a school district must assign its faculty and staff so that the ratio of minority to majority group personnel in each school is substantially the same as the ratio throughout the school district. This was pointed out most recently in the memorandum from the Director of the Office for Civil Rights to chief state school officers and school superintendents dated January 14, 1971 (subject: non-discrimination in elementary and secondary school staff and practices.), a copy of which is enclosed for your convenience."

Q And attached to that letter, which we would like to have marked, if Your Honor please, as Henrico Exhibit 24-D—

The Court: All right.

By Mr. McIlwaine:

Q Was that a copy of the January 14 memorandum? A Yes.

[N-58] Q And then the rest of this letter, did Dr. Severinson ask you to submit your faculty information concerning the assignment of teachers and staff in the Henrico school system for the coming year? A Yes.

Q And subsequent to the receipt of that letter, Doctor, did you send that information to Dr. Severinson? A Yes. At the time that Dr. Severinson wrote, she wanted the information within 15 days. But I called her office and explained to her that we were still recruiting. We were opening three or four new schools and additions and that we were in the process of assigning faculty, but we had not completed this. She understood and I believe later on we were asked to provide information by August 1, at which

time we would have completed our recruitment and the assignment of teachers.

Q And did you thereafter, on May 13, write a letter to Dr. Severinson advising her to the effect that you have just testified? A Yes, on May 13, 1971.

Mr. McIlwaine: If Your Honor please, we would like to have this letter marked Henrico Exhibit 26-E.

[N-59] The Court: So ordered.

The Witness: "Acknowledgement is made of your April 20 letter in which you refer to the assignment of faculty and staff so that the ratio of minority to majority group personnel in each school is substantially the same as the ratio throughout the school district.

"You may recall from past correspondence that we will be occupying new schools and additions for the next school session. We are now in the process of reassigning teachers in accordance with the new facilities. As soon as we complete this work, we will send you the information you requested in your letter.

"Please note that a large part of meeting the ratio involves reassignment of the black teachers at Central Gardens Elementary School. These teachers have already been reassigned for the next school session or have been informed that they will be reassigned.

"In addition, we have conducted a rather vigorous campaign to recruit additional black teachers. In this regard we feel that we have achieved some success that will not know the actual results until later."

Q Doctor, did you thereafter advise HEW in writing of your plan dealing with the Central Gardens [N-60] school situation? A Yes.

Q And is that contained in your letter of May 26 to Dr. Severinson? A It is.

Mr. McIlwaine, If Your Honor please, we would like to have this marked Henrico Exhibit 26-F.

The Court: All right.

By Mr. McIlwaine:

Q And would you read that letter, Doctor? A "Reference is made to your letter to me dated December 10, 1970 in which you state the following: 'We would like to take this opportunity to call your attention to the division's continuing responsibility to utilize every feasible means to further remove the racial identifiability of the Central Gardens student body and to prevent this school from becoming all-Negro with reference to the student body. This redistricting of school zones may well allow for substantial desegregation of this particular school. Please keep our office informed of any further action which may have Title Six implications.'

"When Dr. James K. Wego of your office visited our school division last November, I informed [N-61] him that completion of our new construction program would require redrawing of school zones.

"At its meeting last Thursday, the School Board approved new elementary school zones, including desegregation of the Central Gardens student body. In order to accomplish this desegregation, four additional schools have been used—Ratcliffe Elementary, Glen Lea Elementary, Jacob L. Adams Elementary, and Highland Springs Elementary. Enclosed you will find a description of the zones for each of these schools. You will note that the plan establishes the beginning of a middle school, which is needed in the eastern end of the county, at Central Gardens.

"The approved organization for next year has been given nsiderable study by the staff and we are of the opinion it the organization meets the legal requirements and at same time establishes a basis for improvement of the ucational opportunities for the boys and girls affected by reorganization of the above five schools.

"The organization has been discussed with representaes of the Consultive Research Center on school desegreion of the University of Virginia and these representaes concur with our staff in the above [N-62] conclusions."

Q Doctor, there has been placed in evidence in this ord a Richmond Exhibit 88 that indicates the distance m Central Garden School to Highland Springs is 8½ les. Do you know what the actual distance is between se schools? A The actual distance from Central Garns to Highland Springs Elementary—by the way we have the bus would be 5.2. This was checked with a calited police cruiser.

Q How do you account for the discrepancy between ur figures and those in Richmond School Board Exhibit ? A The particular route that was used in timing the chmond trip.

Q And Doctor, in the handling of the Central Gardens uation, why was Central Gardens chosen as the middle ool? A I might point out that was 16 minutes by bus, , Mr. McIlwaine.

Would you phrase that question again?

Q I said, in dealing with the Central Gardens situation, y was Central Gardens chosen as the middle school? -63] A Really, basically—well, three reasons.

First of all, in the attempt to follow this directive, we had

already recognized the need for a middle school in that particular area.

Secondly, this particular site represented the best possible site that we had available between existing middle schools to the east and to the north and to the west.

Then, finally, it was a school site that already had 17 acres and with the possibility of adding more to it, which we will need to do as we would expand the school to become a middle school.

Q Doctor, why were four additional schools used in dissolving the Central Gardens situation? A These schools are all within what would be normally defined as a community middle school area. Somewhat of a sort of a ring around, not around Central Gardens but within that area.

Q And what is the longest bussing time for any child going from the Central Gardens area to one of these four schools? A Well, the one that is farthest would be the one we just mentioned, Highland Springs Elementary, and by bus it is 16 minutes.

[N-64] Q And after your May 26 communication to Dr. Severinson concerning this situation, did you thereafter receive an additional letter from her office? A Yes.

Q What date is that letter, Doctor? A That is June 30, 1971.

Mr. McIlwaine: If Your Honor please, we would like to have this marked Henrico Exhibit 26-G.

The Court: So ordered.

By Mr. McIlwaine:

Q Would you read to us the last four paragraphs of

that letter? A "Thank you also for your letter of May 26, 1971 in which you advised that effective with the opening of the 1971-'72 school term Central Gardens will house sixth grade students in the eastern end of the county and in future years will be a middle school for this area.

"In moving to this reorganization, students in grades one through five in the Central Gardens zone will attend four schools: Ratcliffe, Glen Lea, Jacob L. Adams and Highland Springs. These schools will be feeder schools for Central Gardens. The projected enrollment which you furnished shows that [N-65] all five schools will be from 69 to 81 percent white.

"This organization appears to meet the requirements of your continuing responsibility to remove the racial identifiability of Central Gardens as referred to in our letter of December 10, 1970. It also is in accord with the principles enunciated by the Supreme Court on April 20, 1971 in the case of Swann versus Mecklenberg.

"We appreciate the leadership you have shown and look forward to receiving your faculty information."

Q Doctor, did you thereafter reassign your faculty and staff in the schools of Henrico County so that the ratio of minority group personnel to the white personnel would substantially approximate the ratio in the system as a whole? A Yes.

Q And did you thereafter forward your faculty information to the Office of Civil Rights as indicated in the letter of June 30? A Yes, along with my letter. We accompanied the information in tabular form.

Q Did you write a letter to Dr. Severinson on that occasion? [N-66] A Yes, I did.

Q What date is that letter, Doctor? A That is July 30, 1971.

Mr. McIlwaine: Your Honor, we would like to have this marked as Henrico Exhibit 26-H, please.

The Court: Yes, sir.

By Mr. McIlwaine:

Q Doctor, would you read that letter? A "Please find attached the roster of personnel for Henrico County schools for the 1971-'72 session and the list of personnel terminating their employment with Henrico County during and at the end of the 1970-'71 session.

It is appropriate to point out the following major changes which will show considerable progress in including members of the minority races on our professional staff.

"One, during the school session 1970-'71 Henrico County employed a total of 63 Negro teachers. For the school session 1971-'72, as of July 30, 1971, the county has employed 87 Negro teachers.

"Two, during the school session 1970-'71 Henrico County had five schools that did not have an integrated faculty. For the school session 1971-'72 [N-67] all 43 school faculties will be integrated.

"The School Board has recently employed a Negro, Mr. Lloyd E. Jackson, Jr., as assistant director of elementary education. This, of course, is a position on our central administrative staff. Mr. Jackson was formerly an elementary supervisor on our staff.

"Four, in summary, Henrico County has employed for the 1971-'72 session, 94 black staff members as compared to 70 for the 1970-'71 session.

Q Doctor, what response to that letter did you receive from the Department of Health, Education and Welfare?

A On August 11, 1971, I received a letter from Dr. Severinson.

Mr. McIlwaine: If Your Honor please, we would like this marked Henrico Exhibit 26-I.

The Court: So ordered.

By Mr. McIlwaine:

Q Would you read this letter, Doctor? A "Thank you for your letter of July 30, 1970 enclosing your roster of personnel for the 1971-'72 school session.

"It appears that your assignments do approximate the Singleton ratio insofar as it is [N-68] statistically possible to do so with the number of minority teachers in your division.

"The appointment of Mr. Jackson, one of three Negroes on your administrative staff of 134 persons, as assistant director of elementary education is certainly a constructive step. We note also your assignment of Negroes to all of your schools and the increased success you are having in recruiting Negroes.

"We commend your efforts and hope that you will continue a vigorous program to recruit and upgrade minority faculty and staff."

Q Doctor, what efforts have been made during your tenure as division superintendent of schools to recruit minority faculty and staff? A We have with our staff in the personnel office expanded the number of colleges and universities that we visit.

We have included many all-Negro institutions. This is a very competitive market. Many school divisions are attempting to employ qualified Negro teachers.

We have even reached the point in the past year

whereby we will contact the college or university office that handles this for us and make it a point to [N-69] tell them that we want to be sure that we have a chance to talk to their black students that are graduating even if they haven't at that time expressed any interest in our school division.

We feel that these efforts have paid off and the latest statistics that we have are improved over these that I have just read.

Q Doctor, how many additional teachers did you hire in Henrico County school system between 1970-'71 school year and the present school year? A We employed a total of 81 new teachers.

Q How many of these new additional teachers were Negroes? A 28.

Q And what percentage of your additional teachers that you hired were Negro? A This means out of the new teachers employed this year, 34.5 percent are Negro.

Q Doctor, does the correspondence that you have read show that on four separate occasions during your tenure as division superintendent of schools, the Henrico County school authorities have been commended by HEW for their leadership in meeting the provisions of the Civil Rights Act of 1964 and providing equal [N-70] educational opportunities for all the students of Henrico County? A Yes.

Q Doctor, during your tenure as division superintendent has HEW made any recommendations to school authorities of Henrico County concerning the operations of the schools and the Civil Rights Act of 1964 which had not been followed by the county school authorities? A No. We have fully complied with every request.

Q Doctor, could you tell me what the total disbursements for the support of public schools in Henrico County has been for each of the last five years? A Total disbursements as of 1966-1967 amounted to $17,994,000.

Q And in 1967-'68? A $24,086,000.

Q 68-'69? A $22, 1,000.

The Court: I am sorry. What was that figure?

The Witness: $22,641,000.

By Mr. McIlwaine:

Q 1969-'70? [N-71] A $27,501,000.

Q And last year, 1970-'71? A $37,675,000.

Q And during those five years, Doctor, what has been the total amount of all federal funds received from Henrico—received by Henrico County during those years? A In 1966-1967, $220,299.

1967-'68, $377,860.

1968-'69, $348,626.

1969-'70, $545,171.

1970-'71, $766,776.

These figures do include everything, even school lunch.

Q Doctor, could you tell me for each of the five years what percent of the total expenditure for the support of schools in Henrico County the entire amount received from the federal government has been? A In 1966-1967, the percentage was 1.2.

1967-'68, the percentage was 1.5.

1968-'69, the percentage was 1.5.

1969-1970, the percentage was 1.9.

1970-'71, the percentage was two percent.

Q Doctor, to your knowledge, has the total [N-72] amount of federal funds that you have received in Henrico County ever exceeded two percent? A Not to my knowledge.

* * *

Cross Examination

By Mr. Gray:

Q Dr. Campbell, did you hear Dr. Gross testify? A Yes.

Q Do you recall how many schools he said there were in these three consolidated divisions if they were consolidated? A As I recall, I think he said 350.

Q Have you checked the plans submitted by the School Board for the City of Richmond to determine [N-73] actually how many schools are involved? A I find only 118 schools listed there in all three divisions.

Q And I believe Dr. Gross indicated that Henrico could have one-fourth of those 350 schools. How many schools, in fact, does Henrico have that are included in the plan? A We had, at that time, under which this was based, would be 39.

Now, the remainder between Richmond and Chesterfield, I don't know that breakdown.

Q Thank you, sir.

The Court: Mr. Little or Mr. Lucas, whichever way?

[N-73] * * *

Cross Examination

By Mr. Lucas:

Q The five black schools closed in Henrico County as of the start of the 1969-'70 school year, do you know what happened to the black principals of those five schools?

Were they reinstated when you reopened the schools as principals? A At the time that the schools were closed they were placed in either what would be comparable [N-74] positions, and it has changed some since that time—

Q What would be comparable positions? Were they made principals of schools having jurisdiction directly over children? A I will have to check. Do you want me to go down the list?

Q Let's go with Fair Oaks Elementary. Who was the principal and what assignment did he get, or she? A The Fair Oaks was Richard L. Harris who made assistant principal at Brookland Junior High School at an increase in salary.

Q Henrico Central Elementary School? A That was William D. Cosby who was made assistant principal of Varina Elementary at an increase in salary.

Q Virginia Randolph Elementary School? A Warner M. Jones was at that time made visiting teacher at a rather large increase in salary, and since that time has been placed in a status of being the only visiting teacher we have who is employed for the full year, twelve months.

Q Virginia Randolph High School? A Mr. Bracey, Robert A. Bracey, was made [N-75] assistant principal at Hermitage High School with no reduction in salary.

[N-76] * * *

Q If you turn to your Exhibit 26, correspondence from HEW, your letter, I am sorry, the letter addressed to you of December 10, 1970, I have it marked as 26-B.

The Court: What is the date?

Mr. Lucas: December 10, 1970, the letter from HEW.

The Court: 26-B

By Mr. Lucas:

Q It makes reference to Central Gardens as an all-elementary school. Central Gardens was originally all-white? A It says virtually all-Negro, I believe. Yes, I believe according to an exhibit that has been introduced—well, no, not all-white. It may have been at one time.

Q Your records indicate that previously it was an all-white school, is that correct? A Well, the earliest record I have here is 1964-1965 with 21 black, 455 white.

Q That would make it a vast majority white, is that right? A Yes.

[N-77] Q And our exhibit, Plaintiffs' Exhibit 103, I will show you a copy, shows '66-'67 it was 62 percent black, is that right? A Yes.

Q Then it progresses to 77, 90, and in '69-'70 it was 94.6 percent black? A Yes.

Q And 95 in '70-'71. A Right.

Q 26-B indicates that it was the position of the Department of Health, Education and Welfare that the school system of Henrico County had a continuing responsibility to eliminate the racial identifiability of this school, is that correct? A Yes.

Q Now, in terms of the school enrollments for the City of Richmond under Plan III, is there not a simliar continuing responsibility to eliminate the racial identifiability of schools having similar percentages to your Central Gardens?

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[N-84] * * *

Cross Examination

By Mr. Little:

[N-85] * * *

Q Doctor, coming back to Central Gardens just a minute. From all the letters that have gone in and your letters to HEW, an underlying premise of Central Gardens was that you wanted a new middle school, is that not correct, and therefore that you went into the community to get feeder schools for what you hoped to have in the future as a middle school, is that fair? A Yes, in the determination of how to desegregate the school. This was the conclusion the staff reached.

Q Well, now, Doctor, had there not been a middle school in the picture, how would you have desegregated Central Gardens? [N-86] A Well, I think that if we had not had any other opportunity we would have had to just maintain the—select whatever schools we had in the community and use them to lower the percentage of the minority race there down to meet, as was required, the Swann requirements.

Q Well, now, Doctor, would you have selected the same four schools that you did? In other words, J. L. Adams, Glen Lea, Highland Springs, and Ratcliffe, are they the four that you have that you would have done? A Well, as I recall, we worked out several different ways of doing it and since this seems to be the obvious, I don't think we ever really reached a conclusion as to if we didn't have any alternative, how many would we use. I believe that is the question you are asking.

Q Well, sir, let me ask this.

There were other ways that you could have done it? A Yes.

Q You could have paired it with Ratcliffe, and take my word for it, if you had—you would have had 62 percent black. Now, would that have been an acceptable means of desegregation from an educational [N-87] standpoint, in other words, simply pair the two schools? A This was being done in accordance with the directive of the HEW and it would not have met the requirements of the Swann decision.

Q Well, Doctor, I am asking you as an educator.

Now, suppose you had paired Central Gardens with Ratcliffe, that is all you would have done, that would have been the easiest way, wouldn't it, because Ratcliffe is the closest school to it of the four, was it not? A Yes, I think that's right, yes.

Q All right, sir.

Now, from an educational standpoint in Henrico County based on the racial composition of Henrico County, if you had paired Central Gardens with Ratcliffe and ended up with a 62 percent black, do you think from an educational standpoint that that would be effective desegregation of Central Gardens? A Well, we really didn't have an opportunity to discuss it, to think of it in those terms, but I would say that it would not be anywheres near what I might call a recent or a reasonable approximation of the black and white in Henrico.

[N-88] * * *

Q Well, Doctor, in Henrico would you feel from an educational standpoint that with a racial composition of

eight percent in the Henrico school system, if you had a 62 percent black school, that was racially identifiable? A Yes, it would in Henrico.

[N-89] Q Now, if you paired it with Ratcliffe, though, that would have meant less amount of disruption of students, wouldn't it, the schools were only two miles apart, just pair those two schools? A No. We couldn't do this, in the first place, because it would not have been permitted.

Q But if you had done it, it would have reduced bussing to an absolute minimum, wouldn't it, if you were going to make any move at Central Gardens and you picked the closest school and paired it, wouldn't that hold bussing down to a real minimum? A Well, we don't consider that the plan that has been adopted gives in to any—I have already testified that the longest run is 16 minutes and the greatest distance is 5.2 and we have not considered what was done there was—

Q Was not excessive bussing? A Was not disruptive to the program.

Q But my point is, you did use a method which involved more bussing that would have been involved in simply pairing, didn't you? A Yes.

Q Right. So sometimes you have to do more bussing, don't you, than the minimum? [N-90] A Well, in the bussing of the type that is being done there, I can't see any, straining my imagination, that this is disruptive to education.

Q Right, sir.

And you said according to your figures it is 5.2 miles.

Now, Central Gardens is—that is school-to-school, and

that doesn't mean the school bus route is 5.2 miles, does it? A Yes. And 16 minutes.

Q Is a bus route, or is it the distance from the school, excuse me, I'm sorry. I thought that the testimony was that the distance from school-to-school was 5.2 miles. A Well, the distance, as I testified, was by calibrated police car, 5.2.

Q From school-to-school? A Yes, sir.

Q Well, but the bus route would be longer than that, would it not? A No. As I understand it, the police cruiser followed the exact bus route.

Q No. I mean the route used to pick up the students who were going to Central Gardens, to take [N-91] them to Highland Springs. Maybe you are planning to let all the children come to Central Gardens and then put them on a bus and take them. A Well, the bus picks up at different places. There were so many children in that area you don't have to—you have got a busload without having to move around.

Q That is a pretty heavily built-up area, isn't it? A Through the entire area.

Q You found that you could travel that 5.2 miles, which is school-to-school distance, in 16 minutes? A Yes, sir.

Q And that is not bad on the child as far as you are concerned? A No, no. We have other bus routes that long.

Q So to summarize some of your correspondence with HEW, Doctor, as recently as 1970-'71 school year, it was clear that you had not met even the requirements under

Title Six with respect to faculty desegregation, isn't that true? A We have had some difficulty in recruiting [N-92] black teachers. I mentioned that earlier. You know, they are in great demand. A lot of them are entering the institutions to go into teaching. They haven't graduated yet, and there is a limited number from which we can choose. But we have made what we consider to be rather fine progress this past year.

Q Well, Doctor— A Nearly 35 percent of the new teachers are black.

Q All right, sir. But my question was for the school year '70-'71 you had not under Title Six desegregated your faculty? A Well, this directive did not come out until January, giving us the guideline to follow spelling that out. I believe she refers to it as the Singleton ratio. We, neither our School Board nor the office of Civil Rights, felt that we had to completely reorganize at that time of the year.

Q Is that the answer to my question, Doctor? A I think it is because as I pointed out in a letter that we were going to have to go through rather massive reorganization for the current school year.

Q Right, sir. Because you had a lot of changes to make, didn't you? [N-93] A We had new schools—

Q Right, sir. A To open.

Q All right, sir.

[N-95] * * *

Q Doctor, you mentioned the fact that you have now on your most recent report about faculty composition, would you get that exhibit out, please?

It was on the back of the letter of [N-96] August 11, 1971.

* * *

Q The last letter.

So for this year that just started last week, you have, as you said, desegregated your faculty? A Yes.

Q Now, would you look down the attachment there and tell me the number of schools in Henrico County that will only have one black faculty member? A Well, you have to remember that this has been slightly changed since then, but you want the number counted?

[N-97] * * *

Q But from an educational standpoint, Doctor, do you really think that, let's say, some of the schools there, let's take Chamberlayne Elementary, you have got a total faculty shown on this as 34 and you are going to have one black teacher? A Yes.

Q Out of 34? A At that time.

Q At that time.

[N-98] * * *

Q Chamberlayne. Let's look again. You have got a total faculty of 34. Now, is this faculty and staff, or is this just faculty, sir, teaching positions, or what is this? A Well, let me check.

The Court: It says personnel, Mr. Little, in the letter.

The Witness: This would be. These would be teachers.

[N-99] By Mr. Little:

Q Nothing but teachers? A Well, teachers, now we

are using the terminology of teacher to cover people in guidance and special education, librarians and that sort of thing, whoever would be assigned to that staff.

Q Not necessarily all classroom teachers? A No That's right.

Q Well, can you tell me with certainty that there will be at least one classroom teacher in each of these schools next year, or this year? A Well, no, I can't, because we never—I don't know that that has any bearing upon the assignment. Sometimes a black teacher is assigned to the library or in counseling. I don't know why we are confining it to one. We haven't made any deliberate attempt to do it that way, if that is the purpose of the question, but I can't answer whether there may be a school without a classroom teacher.

Q So right now, 1971-'72 school year, as far as you know, there could be some schools operating in Henrico County without a single classroom teacher who is black? A It is possible.

[N-100] Q Let's come back to Chamberlayne Elementary. 34 teachers.

Are you satisfied with that ratio from an educational standpoint, that that is effective desegregation of the faculty in that school? A No. I have already testified here that we made every effort possible to increase the number of black teachers, and we intend to continue to do so.

Q So you agree that there should be more blacks than one in the schools? A Yes, sir.

Q When one black teacher is all alone out there, does that smack of a little bit of isolation to you? A Well, that

is why I wouldn't have followed, if you ask me the question to do it educationally, rather than the way we were required to do it, I would have done it a little differently.

Q You would have grouped the black teachers? A Not grouped, but at least I think generally speaking they prefer at least two people when they are going into—

Q Give them somebody to have lunch with? A But that was not our directive in the [N-101] thing.

Q So your choice, though, is based on your problems in recruitment is you either have one per school in 25 schools, your only other choice is to get two, you would have say, 12 schools without any black teachers, right? A Yes.

Q All right, sir. Thank you.

[N-103] * * *

DR. RODERICK J. BRITTON

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. McIlwaine:

Q Doctor, will you state your name for the record? A Roderick J. Britton.

Q Where do you live, Doctor? A Henrico County, Glendale.

Q And do you hold a position with the Henrico County School system? A Yes.

Q What position is that, Doctor? A Assistant Superintendent for Research and Planning.

Q And how long have you held that position? A I am in my third year.

Q And did you hold any positions with Henrico County school system before that? A Yes.

Q What positions were those? A Director of research.

Q And you held that position from— [N-104] A 1959 up until three years ago.

Q Doctor, have you prepared a list of the bond issues which have been voted in support of the public schools of Henrico County from the year 1954 to date?

[N-105] * * *

Q Doctor, what does this exhibit show the total amount of bond issues that have been voted for the support of Henrico schools since 1954 to be? A $49,230,000.

Q And of this total amount, what amount was issued during the last three years shown on the exhibit, '67, '68, '69? A $26 million.

Q Which is approximately? A 52 percent.

Q Doctor, what importance do bond issues have in the maintenance of the public schools of Henrico County? A It is the most crucial thing, I guess, in terms of school buildings because it is the basis upon which we build our school buildings.

Q As far as you know, since you have come to the county, in 1959, has there been any school [N-106] construction or additions in Henrico County schools that have not come from bond issues? A As far as I know, this is correct.

Q Doctor, have you prepared an exhibit showing the history of school construction in Henrico County? A Yes.

Q And is that from 1954 to date? A Yes.

Mr. McIlwaine: If Your Honor please, we would like to offer this exhibit in evidence and have it marked Henrico Exhibit 29.

The Court: So ordered.

By Mr. McIlwaine:

Q Doctor, would you explain this exhibit, taking several of the schools as example, so that it will be intelligible. For instance, would you start with the first year, 1954, and the Douglas Freeman High School? A In the first column on the left is the year in which these schools were built.

The second column is the name of the school. The third column is the enrollment on the opening date.

[N-107] The third column is the pupil capacity and the last column determines whether it is a building or an addition.

Q And so this exhibit shows that in the year 1954 Douglas Freeman High School was built? A Yes.

Q And it has a pupil capacity on that date? A 930 pupils.

Q And it had an opening enrollment? A 1,030.

Q And when was the addition built to the Douglas Freeman High School? A 1961. We put a 225 pupil addition onto that building, rated capacity to 1,155.

Q And that is what those figures show. The 255 is the— A Additional.

Q —additional capacity? A Yes, sir.

Q Which added back to the original 930? A Right.

Q Gives a capacity of 1,155? A Right.

Q And the enrollment on the opening day after [N-108] that addition was built? A 1,261 pupils.

Q And does that continue, Doctor, over to the next page, Douglas Freeman High School in 1968? A Right.

Q And again addition to Douglas Freeman High School in 1971? A Right.

Q Would you take Lakeside Elementary? A Lakeside Elementary had an addition in 1954 of 324 pupils to raise the capacity to 633. The enrollment on the opening date was 960.

Q And when was the addition made to Crestview Elementary? A 1956 we added an addition to accommodate 81 more pupils to raise the capacity to 741. The opening enrollment was 1,015.

Q Is this Crestview Elementary, Doctor? A I beg your pardon, Lakeside Elementary.

Q Lakeside Elementary? A Right.

Q Doctor, if you skip down to one of the junior high schools in 1968, the Fairfield Junior High School? [N-109] A That's right. The pupil capacity of that school was 1,350. We opened it with 862 pupils.

Q And why would there be such a low enrollment for such a high capacity? A Only the children in grades seven and eight were enrolled in that particular year.

Q Were grades thereafter added? A Yes. Ninth grade was added the next year.

Q Did it thereafter become necessary to build an addition to that school even though it had opened with a low enrollment? A Right.

Q And there are various examples like this throughout this exhibit, are there, Doctor? A Yes.

Q Doctor, during the period 1954 to 1971, how many new schools have been built in Henrico County? A 31.

Q And during that same period, how many additions have been made to existing schools? A 36.

[N-110] Q During the period 1954 to 1960, how many new schools were built? A 15.

Q How many of these 15 schools were overcrowded the day they opened? A Ten.

Q During the period 1954 to 1960, how many additions were made to existing schools in Henrico County? A 15.

Q And on opening day after these additons were made, how many of these exceeded the new capacity? A 12.

Q What was done, Doctor, to relieve the overcrowding situation which resulted during these years? A We used double shifts in grades one and two and occasionally in grade three. If we had a large area such as a large basement or recreational area, something like that, we cut it up into small rooms. We added temporary metal buildings on the outside of several schools.

Q Doctor, what factors determine where a new school will be built or where an addition will be made? [N-111] A We usually know in advance how our population is moving and when it appears that an area is becoming overcrowded in an existing school or there is a large subdivision

or number of houses being developed in a particular area we are aware of this. We try to locate school sites or school buildings as close to the center of population as possible in order to take care of new homes and to relieve overcrowded conditions in school that might be around it.

Q Doctor, have you prepared as an exhibit in this case, Henrico Exhibit 22 consisting of some 14 so-called spot maps? A Yes.

Q What do these spot maps show, Doctor? A Shows the location of every child in a Henrico school as of October 1, 1970 in terms of the grade level and the race of children.

Q And did you also prepare Henrico Exhibit Number 10 showing the location of all the schools in Henrico County? A Yes.

Q Did you also prepare Henrico Exhibit 22 showing the zone attendance signs for all the schools for this year? [N-112] A Yes.

Q Doctor, to your knowledge, has the racial characteristic of a neighborhood or race in any way whatsoever had any effect on the school construction program in Henrico County? A No, sir.

Q Doctor, how many classrooms per working day has Henrico built since 1954 to date? A 3.1.

Q That is how many classrooms in how many work days, Doctor? A 3.1. I mean one classroom in every 3.1 working days.

Q I see.

And what is your present situation in Henrico County with regard to school capacity? A We are fairly com-

fortable in the elementary schools and in our middle schools. We are becoming tight in our high schools.

Q And is another bond issue projected for the near future as far as the construction program in Henrico is concerned? A I am in the process of preparing information now to show what we will need in the next five [N-113] years.

Q And do you anticipate on this basis that a bond issue will be asked for within the next two years? A Yes. Or sooner.

Q And what amount do you anticipate this bond issue will be? A Based upon today's estimates or today's costs, between 25 and 30 million.

Q And when do you propose to submit this to the School Board? A I would say sometime in the next, either this school year or the next calendar year.

Q And it would normally be voted on when if it was submitted in the next calendar year? A I would say sometime in the next calendar year.

Q What effect, Doctor, do you think the consolidation of the school systems of Richmond, Henrico, and Chesterfield, would have on the prospects of this bond issue? A You mean the bond issue passing?

Q Yes. A I don't believe it would have a ghost of a chance.

[N-114] Q Why do you think this, Doctor? A Well, I have been working in this area ever since I have been here. I have prepared most of the statistical information for all of the bond issues since I have been here. It is a pretty rugged job to get bond issues passed.

Judging from my experience in the last six or eight months, I do not believe that the people of Henrico County would support a bond program simply because they are completely opposed to this consolidation. I do not believe that they would vote for a bond issue to build schools in Henrico County when a significant number of children will be denied an opportunity of attending those schools. Under the merger a significant number of children will be ordered or will be sent into Richmond schools.

Q Doctor, do you know from your records what the Negro and white pupil population in Henrico County was in the year 1960-'61? A Yes.

Q And what were those figures, Doctor? A 22,453 whites; 1,606 Negro.

Q And what were the corresponding figures for 1970 and '71? [N-115] A 31,607 whites and 2,781 Negro.

Q And what, on the basis of these figures, was the percentage increase during those years of white and Negro pupils? A White pupils increased 40.8 percent and the Negro pupils increased 73.16 percent.

Q Doctor, how many pupils were enrolled in Henrico school system in 1970-'71? A As of October the 1st of that year, 34,131 pupils.

Q And of this number, Doctor, how many pupils had transferred directly to the Henrico school system from the Richmond school system during the ten-year period immediately preceding? A 2,035.

Q And of the 2,035 who transferred during that ten-year period, how many and what percent were Negro? A 532 were Negro pupils. This represents 26.13 percent of the total.

Q Doctor, did you obtain as a result of interrogatories addressed to the Richmond City School Board, a list giving the name, age, and address [N-116] and race of each pupil enrolled in the public schools of the City of Richmond for the 1970-'71 school year who had withdrawn as of March 2nd, 1971? A Yes.

Q How many names were on that list, Doctor? A 2,505.

Q And did you determine how many of the pupils whose names were on that list enrolled in the Henrico County schools for 1970-'71? A 145.

Q And of this number, how many were white and how many were Negro? A 107 were white, 36 were Negro, and two other. They were Chinese.

Q What was the percentage of whites who were so enrolled in Henrico and the percentage of Negro? A 73.79 percent white, 24.83 percent Negro and 1.38 other.

Mr. McIlwaine: If Your Honor please, we would like to have this exhibit placed in evidence and marked Henrico Exhibit 30.

The Court: So ordered.

[N-117] By Mr. McIlwaine:

Q Doctor, have you determined how far it is from the Richmond City limits to the boundary line which separates Henrico and Hanover County on Route 360? A Yes.

Q How far is that distance, Doctor? A 3.5 miles.

Q Is this the shortest and most direct route? A Yes

Q And how far is it, Doctor, from the City limits of

the City of Richmond to the boundary line between Henrico and Charles City County? A 13.0 miles.

Q And how far is it, Doctor, the shortest distance and most direct route from the City limits of the City of Richmond to the boundary line between Henrico and Powhatan County? A I do not know Powhatan.

Q I am sorry. My mistake, Doctor.

I asked you to determine that distance with respect to Goochland, did I not? A That's right.

Q Yes. Do you fnow the distance to Goochland, [N-118] Doctor? A 5.4 miles.

Q Doctor, have you prepared an exhibit showing the distance between certain Richmond schools and Henrico schools to which children would be transported under the proposed Richmond plan and the comparative distance between such Richmond schools and certain schools in Hanover County? A Yes.

Mr. McIlwaine: If Your Honor please, we would like to offer this exhibit into evidence and have it marked Henrico Exhibit 31.

The Court: All right, sir.

By Mr. McIlwaine:

Q Doctor, would you explain this exhibit? A In the left-hand column are the Richmond schools as proposed in the plan in subdivision one and subdivision two. These are not all of the schools in these divisions, but they are examples.

On the left-hand side you have the elementary schools, Whitcomb Court, Highland Park, and Fairmount and Whitcomb Court repeated.

In the second column, you have the school that, in Henrico County, that will be paired with the [N-119] Richmond school.

The numerals in parentheses are the mile distance between from the Richmond plant.

On the right-hand column, you have a school in Hanover County and the mileage from that school to the Richmond school.

For example—

Mr. Lucas: I am going to object to the exhibit in that this is some sort of a motion to bring in Hanover County. I don't see the relevance between Whitcomb Court and a school in Hanover County.

Mr. McIlwaine: If Your Honor please—

The Court: All right, sir. Go ahead.

Mr. McIlwaine: I mean, if Your Honor please, I think the relevance can be shown easily enough without any necessity for that, for any additional motion.

We are presumably talking about propinquity, distance, community of interest and so forth in this case.

The Court: All right. I will admit it for that purpose.

By Mr. McIlwaine:

Q Doctor, would you take one of the examples, [N-120] the elementary school. A Whitcomb Court is paired with Varina Annex. According to the Richmond plan it is 9.9 miles apart. The Mechanicsville Elementary School is 4.9 miles from Whitcomb Court.

Q Will you take the Mosby Middle School? A The Mosby Middle School is paired with two Henrico Schools, Varina and Seven Pines. Varina is 13.4 miles from Mosby,

according to the Richmond plan and Seven Pines is 8.6. Lee Davis Junior High School in Hanover County is 6.8 miles from Mosby School.

Q And in subdivision two one of the elementary schools? A The Norrell Elementary School is paired with R. C. Longan, and it is 9.6 miles apart. Washington Henry Elementary School in Hanover County is 8.5 miles from Norrell School.

Q Doctor, does this exhibit show that there are certain schools in Hanover County which are closer to the schools in the City of Richmond than the Henrico schools which the Richmond school would be paired under the proposed Richmond plan? A Yes.

[N-121] Q And Doctor, have you prepared an exhibit showing the number of the Henrico County school bus trips and the times for each for the school year 1970-'71? A Yes.

Mr. McIlwaine: If Your Honor please, we would like to offer this exhibit into evidence and have it marked as Henrico Exhibit 32.

The Court: 32. All right, sir.

By Mr. McIlwaine:

Q Doctor, looking at this exhibit, would you tell me what the total number of bus trips was in Henrico County last year? A 456 exclusive of special ed.

Q How many of those trips were for less than ten minutes? A 86.

Q How many from ten to 15? A 214.

Q How many were from 16 to 30? A 136.

Q How many of that 456 bus trips were for 30 minutes or less? A 436 or 95.23 percent of the total.

[N-122] Q And how many of those trips of those 456 lasted from 30 minutes to an hour or over? A 20.

Q What percent is that? A 4.77.

Q How many bus trips ran over an hour last year in Henrico County? A One.

Q And how long was that bus trip? A 65 minutes.

The Court: Is that on this exhibit?

Mr. McIlwaine: The time is not. Over 60 is shown, Your Honor, one trip.
Do you see it up in the top column?

The Court: Oh, yes.

Mr. McIlwaine: Less than ten and so forth and that one trip is 65.

The Court: All right.

By Mr. McIlwaine:
Q Doctor, do you understand that under the proposed Richmond plan, pupils would be transported from Henrico County into the City of Richmond schools, they would be selected by birthday lottery? A Yes.

[N-123] Q And were you here and did you he. , Dr. Little's testimony to the effect that no elementary child will have to be transported more than 45 minutes one-way under this plan? A This was what I understood, yes.

Q Now, under the proposed plan how many children which are now attending Varina Elementary School in Henrico County are scheduled to be bussed to Whitcomb Court? A 125.

Q And how many busses does the plan propose to use to transport these children? A Two.

Q Doctor, can you determine the length of time it will take to run a bus until you know the route over which the bus will run? A No.

Q And in a lottery plan, can you determine the route over which the bus is to be run until you determine the residence of the children who are going to be picked up? A You must know the residence of the child before you can determine the route. And you must know which children.

[N-124] Q Doctor, did you conduct a birthday lottery with respect to various elementary schools under the proposed Richmond plan? A Yes.

Q Would you explain to us, Doctor, how this lottery was conducted? A We typed 366 consecutive dates on small slips of paper. We check them. Two people check them, one for the number of days per month and one for the total number of days.

We then selected one number, one piece of paper from the box which contained a date in the year.

We then went to our master list of all children enrolled in Varina Elementary as of last year and selected all children from grades one through five who had that birth date.

Q And did you continue to do this? A All the way through until we reached 125 pupils.

Q Doctor, what did you then do with the names of these pupils as far as their residence was concerned? A I turned them over to the director and [N-125] the assistant director of school transportation. The list carried the name of the child, the grade and his address.

Q And from this were you able to determine the residence of each child who was drawn in this lottery who would normally have attended Varina Elementary who would be transported to Whitcomb Court? A Yes. These two men previously mentioned took the list and went out and located each child by the address given on our master file.

They were located in terms of rural routes and in terms of box numbers, Post Office box numbers, or where we actually knew a certain child lived on a certain road.

Q Doctor, have you prepared an exhibit showing the bus routes which would be followed in transporting these 125 children from the Varina Elementary School district into Whitcomb Court? A Our transportation people have done this for me.

Mr. McIlwaine: If Your Honor please, we would like to introduce this exhibit and have it marked Henrico Exhibit 33.

The Court: So ordered.

[N-126] By Mr. McIlwaine:

Q Doctor, do you have a copy of Henrico Exhibit 33 with you? A Yes.

Q Would you open it, please, and explain what the exhibit shows? A The exhibit shows the location, or as near to the location as possible, of each child picked up in this lottery by a circle. The numeral in the circle is the grade level of the child. The bus routes are marked, one in red and one in orange. The starting point is marked with the word "start" and the route is followed by the arrows which shows the direction that the bus will travel. The T indicates the turn-around points.

Q Doctor, starting on the red route for just a short distance to explain it, there is a circle at the start of the red route, is there? A Yes.

Q And that circle has a numeral in it? A Yes.

Q And that numeral is what, Doctor? A One.

Q What does that indicate? [N-127] A That indicates that the first child picked up on the red route is a first-grader.

Q And the next circle with a four in it indicates that the next child would be a fourth-grader? A That's right.

Q Now, that route comes down to Charles City Road and then turns to the east, is that correct? A Right.

Q And it picks up another child who is a first-grader? A Right.

Q Then the line appears to run into Charles City County to a T which I understand is a turn-around and comes back. A That's right.

Q Now, is that unusual, Doctor? A No. That is the only turn-around spot, only safe turn-around spot that we can find beyond Route 156.

Q And is that turn-around spot currently used— A Yes.

Q —by the Henrico County School Transportation system? [N-128] A Yes.

Q In its bussing now? A Yes. It is my understanding that it is.

Q All right.

Who laid out these routes for you and under your super-

vision, Doctor? A The assistant director of transportation and the director of transportation.

Q And how much experience in Henrico County has each of these gentlemen? A The director of transportation has been there for 12 years and the assistant director has been there for, I believe, 11.

Q Did you consult any of the transportation experts in the State Department of Education in this connection? A Yes. After the people previously mentioned had laid this out, we asked Mr. Winston Gilbert from the State Department of Education and Transportation Section to come down and take a look at it.

Q Did he do so? A Yes, he did. He made several suggestions which helped us modify the route.

[N-129] Q And are the routes as now laid the most feasible routes and shortest time for selecting the children whose names were drawn in the lottery and transporting them to Whitcomb Court? A This is my understanding.

Q Doctor, have you prepared an exhibit showing the number of miles and the elapsed time and the number of pupils who would be transported over each of these two routes? A Yes.

Mr. McIlwaine: If Your Honor please, we would like to have these placed in evidence and marked Henrico Exhibit 34.

By Mr. McIlwaine:

Q Doctor, what does this exhibit show with respect to each one of the bus routes? A Route one there, which is in red, had its beginning on White Oak Road, from the beginning point following this route to Whitcomb Court

school. The mileage is 54.4. It takes two hours and 15 minutes to run this route from the time we pick up the first child until the time we get to the school. There will be 61 children on that bus. This is a 66-passenger bus.

[N-130] Route two is in orange. It starts on State Route 5. It is 45.6 miles in length and takes two hours even to run it from the time we pick up the first child until we arrive at the school. This bus takes 64 of the 125 pupils.

Q Going back, Doctor, to the circle with the one in it at the start of the red bus route? A Yes.

Q I believe you said that indicates that the child who lives there would be in the first grade? A Right.

Q And how old would he normally be as a first-grader? A Normally six at entrance.

Q Now, if the Richmond City elementary schools opened at 9:15 in the morning and this child is to be picked up on the red bus route, at what time would he have to be picked up on the road in order to reach the Richmond school at 9:15 in the morning? A 7:00 a.m.

Q And how many hours would he normally be in school in Richmond once he was brought there? A Approximately six hours.

Q And so he would get out at approximately [N-131] 3:15? A Yes.

Q Now, if he stepped immediately onto a bus and were returned home, what time would he arrive at home? A 5:30 p.m.

Q So that this child would spend some six hours a day in school and some four-and-a-half hours riding the bus, is that correct? A Yes, sir.

Q Doctor, this child's day would then run from 7:00 in the morning when he was picked up until 5:30 when he was returned home, is that correct? A Yes, sir.

Q Do you live in the Varina area, Doctor? A Yes. I live in Glendale.

Q What time do you go to work in the morning? A 7:00 a.m.

Q Approximately what time do you return home in the evening? A Around 5:30. Between 5:15 and 5:30.

Q Doctor, during the months of November, December, January, February and parts of March, is it [N-132] dark when you leave home in the morning to go to work? A Yes.

Q And is it dark when you leave the office in the afternoon to return home? A Yes.

Q And so during these months this child who is shown with a circle with a one in it would leave home in the dark and arrive back home in the dark, is that correct? A That's right.

Q Doctor, in drawing this lottery, did you split any family groups? A Yes.

Q How many family groups were divided under this lottery? A 57.

Q What do you mean when you say splitting a family group, Doctor? A There are 57 children on this list who will have one or more brothers and sisters attending Varina Elementary School.

Q And the ones attending Varina Elementary School will be the ones whose names were not drawn in the lottery? [N-133] A Right.

Q And what is the maximum distance, maximum elapsed time that any one of these children could ride under the existing bus routes to get to Varina Elementary School? A The longest one would be 65 minutes.

Q And what is the shortest time that any child can get to Whitcomb Court under the red route shown here? A Two hours. Two hours on an orange route. Two hours-fifteen minutes on a red route.

Q Doctor, have you heard it testified in this case that if you drew the lottery at random the grade structure would divide almost evenly in most cases? A Yes.

Q Did you find that to be the case with this lottery? A No.

Q What was the distribution by grades of the lottery which you conducted? A 34 pupils in the first grade, 15 in the second, 27 in third, 25 in the fourth, and 24 in the fifth grade.

[N-134] Q So that for third, fourth and fifth grades— A It was.

Q —the lottery was evenly distributed? A Yes.

Q For the first and second it was not? A That's right.

Q As director of research and planning, does this failure of the lottery to give an even distribution in grades have significance insofar as the school to which these children would be transported is concerned? A Yes. The grade one and two there poses quite a problem when you try to section schoolrooms or section children into schoolrooms. I have no idea what would happen at the Whitcomb Court School if these children went there, but it is quite

possible the number of children in grade one may require one more additional classroom in what is considered to be a reasonable class size in grade one which varies between 23 and 25 children.

Grade two, it is quite possible there that there will be two small sections or three small sections which means that you may have to use three [N-135] rooms instead of two rooms.

When planning any kind of enrollment data for a particular school, the number of pupils and the number of sections are very important.

We try, of course, to keep our school section or grade section down as small as possible and be reasonable about it.

This would pose a problem in the event another one did not work according to the so-called law of average, law of probability, or what have you.

Q Doctor, have you prepared an exhibit showing the distribution of grades one through five as drawn on the lottery? A Yes.

Mr. McIlwaine: Your Honor, we would like to introduce this and mark it Henrico Exhibit Number 35, please.

The Court: So ordered.

By Mr. McIlwaine:

Q One other question, Doctor.

At what times were these bus routes laid out under the lottery plan run? A Well, route red, I am not exactly sure whether it was red or orange. One was run at 10:00 a.m. [N-136] and the other one was at 2:00 p.m. in the afternoon.

Q Are either of these times the peak travel hours— A No.

Q In Henrico County? A No.

Q If they had been run at peak travel times would the apsed time on these routes be longer or shorter than ie time you have actually shown in your exhibit? A I ink up to the time that they reach Laburnum Avenue id the Charles City Road, the times would be just about ie same; however, going from Laburnum Avenue and harles City Road into the City, into the western part of at portion of Henrico County into the City, would take ore time than actually is allotted here.

-137] * * *

Cross Examination

Mr. Lucas:

-154] * * *

Q If you were asked, sir, to draw a desegregation plan r Richmond, Henrico and Chesterfield, and you were ked to draw something for the Varina area which would oduce enrollments in the schools in that area, and in the ty of Richmond, which were similar in their racial com- sition, that is no school was grossly dissimilar in its pupil pulation from other schools, based on your experience, at kind of assignment method would you use to achieve is result? A I have no idea. I would have to get all of ese data down on what I call the ground and see what it oked like and then go from there. I have no idea what I uld do until I had a problem to solve of that kind.

Q Do you think you have the skills, you and your staff, e transportation people, to develop such a plan? A I nk we do. I believe there is enough ability there to do it,

[N-158] * * *

Q You made a little test of the lottery system in one particular area of Henrico County. Did you test it in the other areas of the county? A No. The sample was small.

Q You picked the area with the greatest distances, isn't that correct? A Similar problems would occur in other sections of the county. Out in the Short Pump area, for example, similar problems will occur.

Down in the Seven Pines area where the New Kent-Henrico County line runs together. Then when you begin working on the middle schools. Where middle schools will cover the territory maybe of five elementary schools, you run into similar kinds of problems.

I did not do but this one, or rather our people didn't do but this one.

Q That is the area they told you to do and this is the area that has the largest distances in the county, is that correct? A As far as I know, yes, this would be the most difficult one, but you would run into others.

Q And were you here when Dr. Little testified [N-159] that perhaps that area, as area six, you might use your judgment, modify the various proposals in accordance with whatever practicalities of the situation might develop? A If he said this, I don't recall it. Probably he did, but I didn't recall it.

Q Thank you, sir.

Does your plan call for picking up each child at his doorway, or does it call for walking half a mile down the road to a pickup point? A The plan actually calls for the picking up of the child—

Q I mean what you drew. A —at what we call his Post Office box. It may be that they might live 300 yards or 600 or a thousand yards off the road.

Q Pick him up at the mailbox? A Yes. The mailbox may be 400 yards or 500 yards from where he lives. Mine is exactly 680 feet from my home.

Q Does the county presently pick everyone at their mailbox? A I believe this pattern here, according to our transportation people, is the same pattern that [N-160] we operate now in this area.

Q Do you know whether or not the county presently picks up people at assembly points in this area or any other area? A In some areas, yes, they do. I think if you look at the plan you will find in the Louis Road Apartments you have three pickup points. There are two, four, six, eight, ten, twelve, fourteen, 20 children in areas such as this which is a residential area that do pick them up in groups. But out in the rural areas, they do not pick them up in groups because of the safety factor involved in the roads, no shoulders, narrow roads, and so on.

[N-195] * * *

THOMAS R. FULGHUM

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

[N-196] * * *

Direct Examination

By Mr. Gravatt:

Q State your name, please, sir. A Thomas R. Fulghum.

Q What is your age? A 34.

Q Mr. Fulghum, are you employed by the School Board of Chesterfield County, and if so, in what capacity? A Yes, Mr. Gravatt. I am employed by the School Board of Chesterfield County as director of research.

[N-200] * * *

Q Have you made an investigation of the records of the county with the respect to the construction of new schools in the county since 1953? A Yes, sir.

Q Can you state whether or not in each instance of the construction of a new school building that the building has been occupied to its capacity or within five percent of its capacity on each occasion? A To the best of my knowledge, these facilities have come pretty close to being full at the time of opening.

Q Can you tell us how many schools have been constructed within the past 20 years? A I don't have that total figure right at my fingertips, Mr. Gravatt, but I could prepare that [N-201] if the Court would indulge me just a minute.

Q Do you have that information in your briefcase? A Yes, sir, I think I have it here.

That is the number that has been constructed within the last 20 years?

Q Yes, sir. A Total of 33, Mr. Gravatt. This includes schools which, some schools which are now a part of the City of Richmond school system in the annexed area.

[N-202] * * *

By Mr. Gravatt:

Q Is Chesterfield County at the present time operating a school system which is acceptable insofar as its racial

composition and so forth is concerned within the guidelines of HEW? A We are operating under a plan that has been approved by the Department of Health, Education and Welfare.

Q All right, sir.

Can you state, sir, whether or not in your opinion and from your experience in the preparation of bus routes and transportation for school children it is possible to determine the time or the mileage of a bus route within a school attendance zone until you know who the children are that have to be transported and at what places within the attendance zone they live? A Couldn't be done, Mr. Gravatt.

Q Have you made an analysis of the bus routes that were operated in Chesterfield County during the last school year? A Yes, I have, sir.

Q Do you have an exhibit that shows what this analysis reflects? A Yes, I do, sir.

[N-210] * * *

By Mr. Gravatt:

Q Will you explain to the Court first of all how you proceeded to undertake to meet the requirements of the plan for this particular area and this particular route for the bus? A Well, first of all, Mr. Gravatt—

The Court: We are talking about subdivision six, are we, Mr. Fulghum, so I get it straight?

The Witness: Yes, sir. That is in subdivision six.

The plan specified that one busload of black elementary students were to be transferred from Grange Hall to the Curtis Elementary School.

So in investigating the details of the plan we found that this was referring to 57 students in kindergarten through grade five. With this in mind, we went to our master list for that particular school, [N-211] took out all the students in kindergarten through grade five who were black. That gave us, I don't have the exact figure, but I believe a total of 141 students that were black enrolled in kindergarten through grade five.

With that we started with our 366 individual birth dates and proceeded to draw birth dates until we had reached our 57 students.

Q Now, will you tell me what those 57 students fell into with respect to kindergarten, grade one, grade two, grade three, grade four and grade five, please, sir? A Yes, sir. There were ten students in kindergarten, five students in grade one, twelve in grade two, eight in grade three, eleven in grade four and eleven in grade five for a total of 57.

Q Now, how did you locate the residences of these children? A People who were doing this under my supervision went to the principal of Grange Hall School and selected members of his staff who were very familiar with the community and with their assistance located each individual child on the map.

Q Now, how are those children designated [N-212] on this map which is exhibit 3-A, I believe we said?

How are those individual children located on that map, please, sir? A There is a number which appears on the map, Mr. Gravatt, which represents the order in which the child's name was drawn in the lottery. So you will find numbers one through 57 on the map.

Q And that is put on the map? A That is on the map.

Q And you have a color over the number? A Yes, sir. The yellow cover over the red number was simply to accent it so it would be more visible on the spot map.

Q All right.

After you had located the residence of each of these 57 children, what did you then do to undertake to work out the most direct and feasible way to get them to the Curtis School? A It might seem oversimplified, but I analysed and studied the spot map, applied my knowledge and experience from the area of pupil transportation, and devised what I considered to be the most feasible route that we could come up with from that area into the Curtis Elementary School.

[N-213] * * *

By Mr. Gravatt:

Q Can you point out the place that the bus started? Now, you timed this bus? A That is correct.

Q When did you start the time an , at what place on the map?

[N-214] * * *

Q Follow the route, please, sir. A The bus began on U. S. 360 and proceeded westwardly o Deer Range Road, which is a dead-end road. The bus would have to proceed down Deer Range Road, pick up the students living on that road, turn around and return to 360.

It would then proceed eastwardly on 360 past the Grange Hall School to Doss Road, which is another dead-end road off 360.

The bus would go down Doss Road, turning around and picking up the students as it entered and returned.

Return to 360 and proceed eastwardly to, for approximately 1½ miles where it would pick up one student. It would then make a U-turn and return to Baldwin Creek Road, down Baldwin Creek Road to Route 603. We turn right and proceed over to Route 646.

Down 646 to River Road where it would turn right, pick up its last pupil, turn around just [N-215] prior to reaching the Amelia County line.

The bus would then proceed back eastwardly and then northwardly on Route 664, come back to 603, where it would pick up a considerable number of students through this particular area.

It would then come back on Route 603 and proceed down to Route 669, I believe it is, Your Honor, or 659, pardon me. Around 659 and up to 655. Then to Route 653.

Then turn left on Spring Run Road, which is Route 662, over to Bailey Bridge Road and would make its last pickup at this point on Bailey Bridge Road.

The bus would then proceed from Bailey Bridge Road on to or through Bailey Bridge Road to Five Forks, as we know it, or Courthouse Road.

From Courthouse Road to Route 10 south and east on Route 10 into the village of Chester, into the Curtis Elementary School.

Q All right.

Will you state, please, sir, the total time required to pick up these children and to deliver them to the Curtis School? A The time required on this route, Mr. Gravatt, was two hours 35 minutes. And I might add the

[N-216] mileage covered from the first stop to the school was 61.6 miles.

* * *

Q Mr. Fulghum, what was the first child that was picked up with respect to what grade it was in? A The first child picked up was in grade three, according to the record.

Q What was the second child? A Kindergarten child.

Q What was the third child? A Second grade.

Q And the fourth? A The fourth was a fourth-grader.

Q And the fifth? A Was a fifth-grader.

Q And the sixth? A Was a second-grader.

[N-217] Q Seventh? A Kindergarten.

Q Now, go ahead through them for another half dozen. A Second grade, kindergarten, fourth grade, second grade, kindergarten, second grade, fourth grade, third grade.

Q That is enough. That is enough.

Now, I would file this, please, sir. I believe this would be Exhibit 31.

[N-218] * * *

Cross Examination

By Mr. Lucas:

[N-221] * * *

By Mr. Lucas:

Q What relationship do you have with HEW as part

of your duties? A Well, working directly with the superintendent. Any relationship that he might call upon me to work with him on. I wouldn't have any direct relationship with HEW.

Q I was curious just because Mr. Gravatt asked you that question rather than the superintendent, whether or not you had any special responsibility in that area working with federal programs in general or the Department of Health, Education and Welfare, in particular. [N-222] A Well, one of the responsibilities of my department has been working with the superintendent with certain administrative responsibility for federal programs. Of course, as you well know, connected with all federal programs, or practically all federal programs that school systems are involved in, there is a degree of relationship that has to be maintained with HEW.

Q I believe you testified, sir, that Chesterfield County was operating under a plan approved by HEW with desegregation, is that correct? A That is correct.

Q Are you aware HEW presented a desegregation plan to this Court which did not consider race? Did you know that? A I am not aware of it, no, sir.

Q What is the racial composition of the Grange Hall to Midlothian and Manchester transportation? You said you had 25 students going from Grange Hall to Midlothian and Manchester. Are they white students or black students? A I don't have a breakdown of the racial composition on those 25 students, Mr. Lucas, but I have reason to believe that there are both black and white [N-223] students involved.

Q What courses are not offered at Grange Hall that are available at Midlothian and Manchester? A I can't

remember all of them, but there are certain vocational offerings. There are certain, say, second, third, or even fourth years of foreign languages. Advanced mathematics courses and advance science courses that might be offered at these two schools that are not offered at Grange Hall simply because of the size of the student body.

Q How large a building in terms of capacity do you have at Grange Hall? A Well, we filed that interrogatory, but I don't have the exact figure.

Q Approximately? A I would say it is, if the building was used just for elementary students, K through 6, we could probably accommodate about 550 students there. We have a number of temporary classrooms in use, portable units there now in order to provide the course offerings at the secondary level that we now have.

Q How many secondary students do you have at Grange Hall right now? [N-224] A Grades ten through twelve. There are less than a hundred.

Q Are you aware of research data and educational standards which indicate a high school department of less than 500 is inadequate? A Yes, sir.

Q Particularly in terms of course offerings which you could provide? A Yes, sir. We have now under construction a junior-senior high school which would serve that entire area and is designed to accommodate up to 1200 students.

Q Where is that located? A That is located east of Grange Hall on Highway—U. S. Highway 360.

Q How far east? A I would say four or five miles. I don't have the exact distance. I could show you the location on the map.

Q Would you step to the map and point it out for us, please, give us the present location of Grange Hall and where the new junior-senior high school is? A The present location of Grange Hall is [N-225] at the point here and the new school under construction is located at this point.

Q Is north and more to the center of the county, is that correct? A Well, slightly northeast.

Mr. Gravatt: Could he identify it by the grid numbers?

By Mr. Lucas:

Q Give us the present Grange Hall by grid number, if you will? A All right.

The Court: Help the witness down, please, Mr. Marshal.

The Witness: Grange Hall School would be located in 88-B.

Mr. Lucas: That would be in the northern part, right on the line?

The Witness: Right on the line between 72 and 88.

By Mr. Lucas:

Q All right.

And a proposed new location? A Well, the construction site is located in 75-B.

[N-226] Q All right. Thank you, sir.

Is the present plan to continue to operate Grange Hall as an elementary school once this new school is finished? A That is correct.

Q When did you prepare the overlays and the routes owing this random selection that you made? A I prepared the overlay at lunchtime, Mr. Lucas. The routes have

been conducted, and I was trying to think, it was either the second or third day of this school session. It has been within the last ten days.

Q And they were run by you or your staff under whose direction? A We had a regular bus driver who has been familiar with this particular area of the county for some number of years and who knew most of the people involved here.

We had a teacher aide and one in the Grange Hall Elementary School who was quite familiar with the location of the homes.

I had a member of our central staff go along with us with this information.

We also had, for purposes of timing and measurement of distances, we had a police cruiser follow [N-227] the bus as it fully proceeded over the route.

[N-229] * * *

Q With the experience that you have had and other people on the staff, do you think if you were told by the Court or by the School Board to draw a plan of desegregation involving Henrico, Chesterfield and the City of Richmond so that the schools were substantially similar in their racial enrollment in terms of pupils, do you think with the peculiar knowledge that you and your staff have of the local conditions and general expertise that you would be able to do such a plan? A Well, I think given the factors to work with, I think that I have the capability, and I think members of our staff who would assist me would have the capability of accomplishing an assigned task.

[N-233] * * *

The Court: You didn't get together with the School Board or anybody from Richmond or Henrico to try to

prepare a proposed consolidation plan, did you?

The Witness: No, sir.

[N 234] * * *

Cross Examination

By Mr. Little:

[N-236] * * *

Q Now, in selecting your example, is it fair to say that you picked about as rural an area and with the greatest distances possible to get this estimate of bussing? Are there any comparable distances in the other five subdivisions? A I believe, to the best of my knowledge, that from the Richmond plan the school-to-school distance shown on this particular situation was larger than the others.

[N-237] * * *

A Right. But do you think in any of the other subdivisions involving Chesterfield County that you should come up with any extreme examples such as this, such as in three and four, in subdivision three, four and five, excuse me? A Well, I don't think I would find as long a bus route.

[N-249] * * *

Q Finally, sir, have you spent any time trying to make any constructive suggestions to the plan that Dr. Little testified to? A Constructive?

Q Improvements on the plan, excuse me.

The Court: Did you work on any suggested plan of consolidation? I think that is what he means.

The Witness: No, sir, I have not worked on any suggested plan of consolidation.

[N-252] * * *

R. F. KELLY

was recalled as a witness and testified further on his oath as follows:

Direct Examination

By Mr. Gravatt:

[N-256] * * *

Q Now, what was the situation with regard to the City of Fairfax and the County of Fairfax at the [N-257] time you went there? A At the time when I arrived in Fairfax County, the Fairfax County School Board educated all of the students in Fairfax City under contractual agreement.

Fairfax City did have and still has a superintendent and School Board. Fairfax City, from all indications, is now moving toward a separate school system. They are now building a senior high school. I believe they have one or two elementary schools that they have built.

The arrangement between Mr. Funderburk and the superintendent and the City, I was not aware of because I was not at that level.

Q All right, sir.

Now, in your opinion, will you state whether or not any advantages of any nature would result from a consolidation of the school systems of Henrico, Richmond, and Chesterfield? A I could see no educational advantage at all.

Q Are there any advantages of any other nature that you know of? A I can see none at the present time, [N-258] either fiscally or educationally.

Q If such a system were broken down into six separate subdivisions, as this plan proposes, and based upon your experience and observations in Fairfax County, what would be the result so far as any economies or any savings would be concerned? A Well, there is, of course, we all realize, there is a major difference between this plan and Fairfax County.

Here we are talking about three fiscally independent bodies with the school superintendent owing allegiance to a central board, but also getting his fiscal finances from three separate divisions.

In Fairfax County, each division was equal. I sit here in amazement that we talk about area subdivision six as something separate and different. If you are going to have a plan then they should all be equal.

The comment made that we should give it to Petersburg or maybe Petersburg might be interested in it, is abhoring to me. I can't understand how we can make a plan that is not equal to all.

Q Would the same requirement of administrative personnel and service personnel and so forth apply [N-259] to each of the divisions in this massive school system— A Yes.

Q —that you have mentioned— A Surely.

Q —in Fairfax? A Yes, sir. If you wanted to make them all they would all have to have the same facilities and same supervisory staff and same service staffs.

Q Would that result in an increase in expense and administrative costs or economy? A I think there is no doubt it would cause an increase. I think first thing you would have to do, of course, is to equal out all of the salary

scales in the three areas. They are not equal at the present time.

I think there are many things, and again I don't purport to know a great deal about the plan or some of the intricacies that Richmond has worked on, but it would cost, it would definitely cost money.

Q All right.

In your opinion, based upon your experience, would there be disadvantages resulting from the consolidation? A Yes, sir, very definitely. I think you would have, first of all, you would lose the support [N-260] of the people. And I will talk about Chesterfield County. I think you would lose the support of the people in Chesterfield County for their schools.

We can make remarks about a bond issue that was passed by a small number, but as the gentleman who was the superintendent in Chesterfield County for many years called me up that night and said, if you pass by one, that is a unanimous vote. I think you would not get a bond issue through in Chesterfield County for many years.

I think you would have difficulties with transportation. I think transportation should be a matter of movement to the nearest school for the best education, and not movement past schools for education.

Q Now, let me ask you this question.

From your knowledge of the three systems involved, is each one of them at the present time capable of delivering to the students within that system a quality education? A Mr. Gravatt, I consider Henrico and Chesterfield County and Richmond to have three fine school systems. I think they are approximately the right size for school systems. I think they all have administrations that can do

—that can guarantee [N-261] quality education if they would work at it.

Q Assuming that each of these school systems, as you have just stated, can deliver to the children within their particular jurisdiction a quality education, would there be any justification from an educational point of view, from consolidating these children and then taking the white children in Chesterfield and Henrico and bringing them into Richmond and a substantial number of the black children in Richmond and taking them out into Chesterfield and Henrico? A I see no educational value at all.

Q Now, to what extent, in your opinion, is it essential that the school system have a reliable and consistent source of financial support? A Well, I think it is the main segment of a school system. The finances allow you to pay the salaries that will collect for you the best teachers. It will allow you to try innovative programs. It will allow you to build the kind of buildings that are necessary in today's education.

I think without it, it would be—well, if any professional person that I know would accept that position under those circumstances, then I would not consider him a top educator in the country.

[N-262] Q What, in your opinion, would be the prospect, and you have had the experience, of course, of having to present budgets to Boards of Supervisors, and I might qualify this by stating that the present law allows a Board of Supervisors to cut each category in the budget to such extent as they in their opinion may think proper. A That is right.

Q How would this consolidation affect the capacity of the superintendent of this consolidated school to get ap-

proval of a budget for the operation of this school? And I will just ask you about the Board of Supervisors of Chesterfield County.

The Court: Just a moment.

Mr. Lucas: I think we are getting into legal questions since they are a defendant in the cause and would be subject to the orders of the Court.

The Court: That is true, Mr. Gravatt. I think we are, too, but I think I understand Dr. Kelly's testimony. The gist of it is he thinks that conditions are such that the Board of Supervisors of Chesterfield would be very reluctant.

Mr. Gravatt: All right, sir. We will just assume—

[N-263] The Court: I accept that.

Mr. Gravatt: We will assume he has answered it in that way.

The Court: Is that fair?

Mr. Gravatt: That all of us understand he would answer it.

The Court: All right.
Now, whether they have any choice about it is something else again.

Mr. Gravatt: This is right, sir. And of course, if you tell them to do it, they have to do it.

The Court: Well, I am not suggesting that at all.

Mr. Gravatt: I know you are not, but I am saying that that is a fact.

The Court: All right.

Mr. Gravatt: And we all have to accept that.

By Mr. Gravatt:

Q Dr. Kelly, it has been suggested by counsel in this case that the present arrangement in Virginia, when a certain minimum amount that is required for the support of schools has been established, [N-264] that these school systems could be financed by the process of a mandamus from the Supreme Court of Appeals of Virginia to supply that money to nourish these systems. What, in your opinion, would be the result of such an approach to a solution of the financial problems? A Well, I think the solution would naturally cause basic education, without the opportunity for innovation to take place. I think everything would be equal but it would be at the lowest ebb. It would not—you would not have enough money to do some of the things that we do in Chesterfield County right now, or Henrico County, or for that matter, what they do in Richmond.

Q Well, assuming that the Supreme Court of Appeals of Virginia will not mandamus anybody to issue some bonds, or to approve a bond issue. What place does the capacity to construct buildings and to make future plans in accordance with the developments and the insight and the growth in knowledge in educational matters, what does the capacity to issue bonds, how does it relate to the maintenance of a quality educational program? A Well, I think it would be almost catastrophic. I can't conceive, in my small number of years in education, that you can run a school system [N-265] where you are not assured of X number of dollars over a period of years so that you can continue education. That you would be in charge of a school system where you didn't know from year to year whether the people were

behind you to support public education. That the Board of Supervisors was behind you. It would be an impossible working condition not to be able to plan over a three or four-year period.

It takes us two years to build a school. I don't know how you would get the money for the school. I wouldn't know when you would start the school and when you would ever pay for the school under the conditions as outlined in this plan.

Q Will you describe, please, sir—how long have you been superintendent of schools in Chesterfield? A A little over two years.

Q Will you describe, please, sir, the approach that you have taken and the ambitions and desires that you have had in leading the school system in Chesterfield County to see it grow and develop into an instrument to serve all the people of the county, all the children in the county? A Well, I think one of the reasons why I [N-266] was honored to have been selected as Chesterfield County school superintendent was that, first of all, I had known Roy Alcorn professionally and personally. I knew Mr. Thompson just by name. But I knew that people in Chesterfield County over the past five or six or seven years had supported education to the point, I think, where something like since 1967 they had passed something like $32 million worth of bond issues in order to build better schools. They were one of the, not the first, but one of the leaders in the kindergarten program. I think they spent something like 2.9 million dollars by going to the people for kindergarten complexes. They were one of the outstanding schools looking at the ungraded primary, the open concept building. It was really an honor, first of all, to be appointed.

Second of all, I was moving from an area in Fairfax of 30,000, initially, when I signed by contract, I was to have a school system of 30,000, but annexation took place and I wound up with 24 or 25,000 students.

I still felt, and with all the turmoil that went on in the county because of the annexation, and I was not part of it, but I could feel it at parties, at the clubhouse, you could feel people talking about [N-267] annexation. It was still my understanding, though, that Chesterfield County would support quality education. If I had any doubts when they passed the bond issue during hard economic times at a general election for 17.7 million dollars, I was convinced they still would support quality education in Chesterfield County. This school system, and to use a trite phrase, that you might hear, is on a cutting edge of innovation. They are doing some things that are outstanding.

I see in Chesterfield's future the same type of future that it has had in the past, of the people supporting education, supporting their school board, and their superintendent, and at times, if need be, going down to the Board of Supervisors to make them aware that they are interested in quality education, and in some cases were willing to have their taxes raised in order to get what they expected for their students.

I am not sure, in fact, I would say that if this plan comes into effect and the consolidation takes place, that it would ruin the fine spirit that we have in Chesterfield County for the schools.

Q Will you describe to the Court the system of teaching and education that is now being used [N-268] in that county and is being extended through the whole system of an ungraded school system? A Well, about five to six years ago the School Board gave the superintendent a

charge to look at the ungraded programs that they had read so much about. This feeling was at that time that maybe this was the flow of the future, that children were not alike, that individual programs could be built for children.

It was on a pilot program, I believe, in three schools, about two years ago or three years ago, and it became a policy of the School Board that Chesterfield County, primary block, K through three, would be ungraded, and that at that time, in the near future, and I don't think there is a date set for it, although there may be, there is a '72—'73 date that all elementary schools, K through six, will be ungraded.

We now have every elementary school in Chesterfield County on a K—three ungraded program. We have about, and I don't know the percentage, but I would say the majority of our schools already moving, four, five, six.

We are now in the process of looking at the ungraded system at two new junior high schools that [N-269] opened up on August 30.

We have no experience at this point, so I can't base any comment on it, but we are convinced it is the way of the future.

We have a new high school that will open up in 1972, the one that was mentioned before by Mr. Fulghum, the Clover Hill School, really a seventh through ninth junior —senior high school that will be under the ungraded principle.

We are also, and a commission was appointed by the School Board last week, or initiated by the School Board last week, I believe, at this Board meeting, they will appoint members to look at the year-round school principle for Chesterfield County.

This, I believe, is another possibility for Chesterfield County as many others. In fact, I am on the State committee for year-round schools and I believe there are 11 or 12 school systems now looking at this. I think there may be a dozen, including, I think, even Richmond.

Q Now, in what, in your judgment, can this type of educational system contribute to the children that come under its influence? And I [N-270] specifically have concern that maybe in some ways under-achievers or limited, and on the other hand, children who may have some special or superior ability? A Well, I think one of the difficulties with education in the past has been that we assigned 30 students to a teacher and in some cases 30 students were taught one way from a textbook with a test given at the end of six weeks or eight weeks.

The grades were based on the top student in the class and then somehow or other leveled out for all of the other grades.

This meant, and I am trying to think of a good phrase that I heard, there is nothing as unequal as the equal treatments of unequals. In other words, we have children who are not equal. They are unequal. They come to us unequal. Our education then has to be, has to begin unequal. And each child taught at the level at which the child is at through some diagnostic test. I don't think we are sophisticated enough right now to do a complete diagnosis of every single child that enters school.

I say we are not sophisticated enough because I don't think we have right now the test criteria that we need. [N-271] We also do not have the personnel, but I think this is where I would like to see Chesterfield County move.

I would like to see us look at children with regard to the point of which they enter, with their background, and then

build a program for that individual child. This doesn't mean by any means that a teacher with 30 children would have 30 different programs to write because children are going to naturally group themselves together in closely related sections of the material she is teaching.

I think Chesterfield County, as I have already said, has always supported, at least from all indications that I have, has supported education and is willing to support education.

[N-273] * * *

By Mr. Gravatt:

Q When you came into Chesterfield County was there already a program on foot to bring about, for lack of a better word, an integrated school system consistent with the requirements of HEW? A Yes, there was.

Q Has that program gone forward under your guidance and leadership? A It has.

Q Mr. Fulghum has testified that you have, your school system, is operating under a plan approved by HEW? A That is true.

Q It has been testified here, and attention has been called to the fact, that you have had in Chesterfield County an all-Negro school which has been identified as the Matoaca Laboratory School? [N-274] A That is true.

Q I think you mentioned that at some point in your testimony when you were called as an adverse witness—will you explain, please, sir, what you know about the way this school came into existence, how it has operated heretofore since you have been there, and what, if anything, has taken place with respect to it in recent days? A From what I can gather, Mr. Gravatt, the Matoaca Laboratory School is

a laboratory school conducted under the auspices of the Virginia State College with some assistance by Chesterfield County in the way of ADA.

From what I can gather, it is like most laboratory schools around the country similar in nature to one or two right here in the State of Virginia.

Its main objective, or one of its objectives is to try out new programs as professors in the educational department perceive them to be better education for children. They wanted smaller groups. They staffed the school with teachers, I believe, and I don't know if this is correct, but I believe all of them have their Master's degree. It was used by the College of Education as a training ground for prospective [N-275] teachers who were coming out of the college.

I suspect, and I don't think this is any secret to most people in education, in college work, that it was also used as a magnet to bring in people to the professorship level, if they were young and their children could then attend what is purported to be an exceptional school.

Q Now, this school, was there, and this arrangement had been made and was working when you came to Chesterfield? A Yes, it has been. It was there when I arrived.

Q What contribution does the county make to the operation of this school, or did the county make to the operation of the school? A Well, through arrangement with Virginia State College, the School Board of Chesterfield County supplied to the College the ADA that would normally come to Chesterfield County for those students, if those students indeed were in attendance in a Chesterfield County school.

As I have already testified, we gave a small amount of

money for instructional materials. We provided the bus transportation for these students.

[N-276] I believe we also, and here I have to say I am not sure, but I believe we also supplied the food services for these children.

In recent weeks we received a letter from Dr. Severinson.

Q Let me ask you, did the School Board or the superintendent of schools of Chesterfield County have anything to do with the operation of the school, or what was taught in it or how it was operated? A No, we did not select the students.

Q Did you have anything to do with the assignment of children to the schools? A We did not.

Q All of that was under the control of the administration of Virginia State College? A That is true.

Q All right, sir.

Now, go ahead. A A few weeks ago we received, four or five weeks ago, a letter from Dr. Severinson stating that a continuation of our interest in the Matoaca Laboratory School could possibly, and I don't know if this is her exact words, but could possibly hurt our [N-277] compliance agreement with HEW.

I visited with Mr. Russell, Dr. Russell at Virginia State, told him of the communique from Dr. Severinson and Dr. Russell said he understood, and a press release was made.

Q Let me interrupt you.

Prior to that communication, had you at any time had any criticism of the Matoaca Laboratory School and its relations to Chesterfield County school system? A Not to my knowledge.

Q Not to anybody, as far as you know? A Not to my knowledge.

Q It certainly hasn't come to you? A No, has not.

Q In response to that, go ahead.

You went to talk to Dr. Russell. A Dr. Russell, as I stated, understood the situation.

A joint press release was made by Mr. Russell and Dr. Russell that Chesterfield County was removing itself from any connection to the Matoaca Laboratory. They are now running the school through the Virginia State College finances and administration.

[N-278] Q All right, sir.

Now, I have filed the exhibit that I gave you probably prematurely a moment ago, which is number 31 of Chesterfield defendants.

Does this exhibit show the progress that has been made in bringing about a complete integration of the schools in Chesterfield County? A I would say it is a very good indication of it.

Q Dr. Kelly, what has been the response or the reaction of the people of the county to the phasing out or the closing of, as this has developed and gone forward over a period of time, of the Negro schools in the county and the absorption of the black people in the county into the white schools? Have the people in the county accepted it, and are they going forward with their school program now? A I think it was highly accepted by the people in Chesterfield County. I know of no circumstance where any outward signs were made because of the closing of Negro schools and the integrating of these children into the regular schools in their neighborhood or to the effect when we reopened these schools and annexes to main buildings. I have been extremely pleased.

[N-279] Q Now, there has been some statement made here that in a desegregated school you wouldn't find any black people in any honor societies or in any of the clubs or in any of the other activities except maybe in athletics. In response to that, did I ask you to inquire and to find out exactly what the black children in the present school system in Chesterfield are doing with respect to participating in school activities of all kinds, and to particularly give me such information as you could procure with respect to the comparison of black students that are leaving your system and going to college, and with the white children who are doing likewise? And you have prepared that, I believe, have you not? A I have.

Q All right.

I would like to offer this as an exhibit if I may, sir.

The Court: 32.

Mr. Gravatt: It would be 32.

By Mr. Gravatt:

Q Now, in order that this may be fully understood, I offer another exhibit. I am not certain [N-280] that the Clerk has a copy.

Do you have a copy of exhibit, Racial Composition, 1970-'71, Chesterfield County Schools?

This would be Exhibit Number 33, I believe.

Now, Doctor, if you will take that exhibit and look down it, will you state the white and Negro totals in Meadowbrook School, which is the first one listed there? A Meadowbrook High School has 33 Negroes, 1,102 whites.

Q Thomas Dale School? A Thomas Dale School has 191 Negroes, 1,506 whites.

Q Manchester School? A Manchester School has 69 Negroes, 1,176 white.

Q Midlothian? A Midlothian School has 94 black, 1,302 white.

Q Matoaca? A Matoaca High School has 389 black, 504 white.

* * *

Q Now, Dr. Kelly, did you submit an inquiry to all of your school people, and I ask you to listen [N-281] carefully, inquiring how many children were enrolled in each school in Chesterfield County from kindergarten through the twelfth grade who had attended school in Richmond the year before they first enrolled in the Chesterfield school system? A I did.

Q In this exhibit that I have just handed you, which I believe would be 34, is this a true statement of the response that was received to that inqury? A Yes, sir, these are the responses from our principals.

Q All right.

Mr. Lucas: Could we have the date of this, sir?

Mr. Gravatt: Well—

Mr. Lucas: There is no indication as to when.

Mr. Gravatt: Well, I realize that. That is just what I was looking at myself and I thank you.

When was this inquiry submitted to your schools, Dr. Kelly, in any event?

The Witness: This year.

By Mr. Gravatt:

Q It applies to the last school year? [N-282] A Applies in 1970-'71 school year.

Mr. Gravatt: Is that sufficient?

The Court: Never mind whether it is sufficient for him or not.

Mr. Gravatt: Excuse me, Judge. I want to satisy everybody, if I can.

The Court: The point is, it refers to those children who are obviously attending schools in Richmond the preceding year, isn't that correct?

The Witness: No.

The Court: Well, it says—

The Witness: Prior.

The Court: Prior to their present enrollment, which I would take was 1970-'71.

The Witness: No, because some of them could have been in Chesterfield County from Richmond eight years ago and they would have been picked up on the survey.

The Court: But it says immediately prior.

The Witness: Yes, but immediately means—well, let me see now. Maybe our terminology is inaccurate.

[O-4] * * *

PROCEEDINGS

(September 8, 1971) (Wednesday, 10:10)

The Clerk: Civil Action 3353, Carolyn Bradley, et al., versus the City School Board of the City of Richmond, Virginia, et al.

Case continued from yesterday.

The Court: Good morning, gentlemen.
All right, Dr. Kelly, you were still on the stand, I believe.

(Dr. Kelly resumed the stand.)

[O-5] * * *

Cross Examination

By Mr. Lucas:

[O-9] * * *

Q I am trying to speak in quite general terms, first, and then we will get to some specifics, but would you describe the society today as the mobile society, children ought to end up living in another part of the country from their parents as a result of job mobility and things of this sort? A Yes, I think we are a society of "have luggage, or have degree, will travel."

Q Would you think, sir, that before a child could be assigned to a particular school that there should be an investigation of his personal background and his family, the homogeneity of his neighborhood, do you think that that is a valid thing to do before deciding what school building a child would attend? A Well, first of all, I don't accept the concept of homogeneity.

Q What is wrong with that? A Well, because given five children, and let's just take an example of five children, with an IQ of 90, they are still not equals and you cannot give equal education to all.

[O-10] Q I didn't say anything about IQ. I said homogeneity of the neighborhood. A Well—

Q We will get to IQ. A Well, homogeneity of the neighborhood.

Q Do you think that is a valid consideration that you would look at before assigning a child to a particular school? A Mr. Lucas, I really don't understand the question by what you mean by homogeneity of the neighborhood. I don't know of any neighborhood that has this characteristic of homogeneity. There are Catholics, Baptists, Protestants—

Q How about race. Are neighborhoods racially homogeneous? Are they all-white, almost so, are they homogeneous as to social class? A Well, no, I don't think—social class? I think any neighborhood that I can think of, even the neighborhood I live in, there are homes ranging from 20,000 to 100,000. There are blue collar workers and white collar workers in our neighborhood.

Q How about black and white people? A There are no black in my particular neighborhood. They don't happen to be black, but I [O-11] don't think that is the homogeneity, you would assume that it could not be.

Q So in other words, you are saying you don't think this has any valid basis for assigning children to a particular school? A No. I think you assign children to the closest school to them to give them quality education.

Q We will go into quality education in a minute.

Do you think it would be a good educational practice to require a child seeking to enroll in a school to have his name published in the newspaper for two consecutive weeks before you would permit him to be enrolled? Would you think that would be a good educational practice? A I know of no situation where that abides and therefore I don't know how I could answer the question.

Q Well, let me show you Plaintiffs' Exhibit 141. Ettrick Elementary School is a Chesterfield County school, isn't it? A It is.

Q Plaintiffs' Exhibit 141 is a letter, Pupil Placement Board, directed to Dr. James H. Brewer [O-12] Ettrick, Virginia.

Would you read the first two paragraphs, please? A Surely.

"Dear Mr. Brewer: The Pupil Placement Board has given deliberate and mature consideration to your request for the placement of your child, James Nimrod Brewer in Ettrick School. The Board has even taken a view of your community. A number of related factors were considered, including the homogeneity of your neighborhood, safety conditions involved in going to and from school, the provisions of school bus transportation to and from the Matoaca Laboratory School, and the absence of this service for Ettrick School, and the faculty and facilities at Matoaca Laboratory School. The difference in distance is negligible."

Q Does that indicate to you the student was at the Matoaca Laboratory School and was applying to Ettrick, from reading that? A You know, he was trying to be placed in Ettrick.

Q In Ettrick, yes.

He was at the Matoaca Laboratory School? A Yes.

[O-13] Q The date of that is June 28, 1962, is that correct? A That is correct.

Q I show you a letter which is attached dated July 27, 1962, Pupil Placement Board, 9 North 3rd Street, Richmond, 19, Virginia, again addressed to Dr. Brewer.

Would you read that letter, please? A Surely.

"Dear Mr. Brewer: We have received your protest and request for a hearing in connection with the denial of transfer of your child, James Nimrod, to the school desired by you.

"As is required and will be advertised once a week for two consecutive weeks in the Richmond Times Dispatch, the hearing will be held on Tuesday, August 14, 1962 in the offices of this Board given above, beginning at 9:30 a.m. Eastern Daylight Time or as soon thereafter as the matter can be heard.

"Arrangements should be made for the child and the child's parents to be present and for the presentation of your case. Sincerely yours, Virgil Hilton, Executive Secretary."

Q I show you a letter on the stationery [O-14] of the Chesterfield County public schools, which I marked as Plaintiffs' Exhibit 141-A. It is addressed to Mr. and Mrs. Bruce Fleming, signed by Fred D. Thompson. I believe it is partially obliterated? A That is correct.

Q Would you read that letter, please, sir? A "Dear Mr. and Mrs. Fleming: The construction of an elementary school on Dupuy Road is progressing and while we cannot predict the completion date with any degree of accuracy—

Q Excuse me, sir. Dupuy Road, is that a school site that was formerly a black school in Chesterfield County? A Yes, that is. I would suspect it is the Dupuy Elementary School.

Q Now, called Ettrick Annex? A That is true.

"We believe that we will be able to occupy the building late October or early November, 1961. The children who will be enrolled in this school in grades one through six will be those children in the Ettrick area who wish to be enrolled and in some cases those who may not be admitted to the Matoaca Laboratory School. All of the children in the area of grade seven [O-15] will be housed in the new school. Since we will not be able to open the new school at the beginning of the new session on September 5, 1961, it is necessary that we conduct a survey to determine those children who will be transferred from the Matoaca Laboratory School and the Union Grove School when the new school is ready for occupancy.

"As you well know, the Matoaca Laboratory School has been overcrowded for a number of years and those of you who are long-time residents will recall that a number of years ago we transferred all seventh grade children to the Union Grove School."

Q Did it indicate from the Matoaca Laboratory to Union Grove? A Yes. That appears to be so.

Q All right, sir. A "To the Union Grove School. And on other occasions requested some of the children who live not far from the college to attend the Union Grove School and the lower grades. A number of conferences have been held and a great deal of time has been given in study to the problems involved and with the completion of the new school plant, the Virginia State College authorities

will admit children to Matoaca Laboratory [O-16] School by application only in grades one through six. And will so organize the Laboratory School that not more than 30 pupils will be assigned to any one teacher. The admission policy of the Matoaca Laboratory School will be controlled by the Virginia State authorities, Virginia State College authorities. The Virginia State College authorities will make application forms available at the office of the principal of the Matoaca Laboratory School between the hours of 9:00 a.m. and 4:00 p.m. during the period July 17 through the 28th, 1961."

Q Now, you were not with the County at that time but that does indicate some degree of the relationship between Matoaca Laboratory School and Chesterfield with regard to the seventh grade students being taken out of the school and placed in Union Grove and then to be placed in the new school? A Well, I don't know when Chesterfield County moved into K—6 and 7—9, but I suspect that if they were K—6 at that point, the seventh grade could not remain and they would have to go to the junior high school. But I don't know if that is true.

"You will be notified at a later date by the Virginia State College Authorities whether or not your child has been accepted for enrollment in the [O-17] Matoaca Laboratory School. There will be no change in the arrangement for children either at the Matoaca Laboratory School or at the Union Grove School at the beginning of the coming session.

"Notice will be given when the transfer to the new school is to be effective. I suggest that you secure your application form or forms within a period specified and return them immediately to the proper authorities. Sincerely yours, Fred D. Thompson, Superintendent of Schools."

Mr. Lucas: Your Honor, I do not know if this document was given a number yesterday.

The Court: Yes, it was. 35.

Mr. Lucas: Thank you.

[O-20] * * *

Q There has been some testimony, sir, with respect to the voting turnout in various elections. Appendix 27 at page 143 of the booklet contains a list [O-21] of bond issues in Chesterfield County. Would you read the dates and the amount of the bond issue and the votes? A Surely.

Chesterfield County school bond issues. April, 1953—September, 1967.

"April 7, 1953, $3 million bond issue passed. 2,135 for and 566 against.

"May 29, 1956, $3,500,000 bond issue defeated. 1,662 for, 1,761 against.

"October 15, 1957, $4,500,000 bond issue passed. 4,631 for and 2,498 against.

"April 19, 1960, $6 million bond issue passed. 3,991 for, and 1,674 against.

"May 8, 1962, $10 million bond issues passed. 2,967 for and 588 against.

"May 11, 1965, $10 million bond issue passed. 4,043 for and 957 against.

"September 27, 1967, $14,600,000 bond issue passed. 3,259 for and 1,093 against."

Q Thank you. A You are welcome.

Q You talked about the difficulties of why you were against the desegregation plan for the [O-22] Richmond

community. You said that this would lose the support of people for their schools.

Why do people support schools? Is it for educational reasons; is it for political reasons, or is it just a matter of local pride, having something different from somebody else? A No, I think a combination of reasons.

Q Let's talk about the educational reasons people support schools, why you as an educator ask people to support schools. A Well, of course, educationally, I ask people to support bond issue for monies to construct educational facilities that are in line with the trends of modern education that offer the students ample opportunities to do many things that could not be possible or are not available in the old type rectangular, what some of the authorities in education call "egg crate schools."

We ask people to support education because in the bond issues that have passed since I have been superintendent there was money in that bond issue, some $2 million or so, for renovation of existing buildings to bring them more in line with buildings that we are now building today.

[O-23] Q Let me interrupt you. A Surely.

Q See if I can summarize. See if we are in agreement. You ask them to support the bond issues to provide better education or to equalize educational opportunities. If you have got some students, and I think this report talks about it in schools, that do not have the capability of providing the up-to-date educational program we talked about, you may want to renovate the building to convert it to modern usage. You asked for money to build new buildings for capacity reasons and to keep in harmony with current trends in education, and it is all directed towards providing both equal education and superior education for the people

in the community, is it? A Well, I will go part of the way with you, but I think also we have got to consider, and I don't want it to be thought that you cannot give quality education in an old facility, I think that it is easier to perform some of the things that we would like to see done in the open concept school, but by no means do I mean that quality education, good education, does not take place in older facilities.

Q But better education takes place when [O-24] you have the resources and the facilities that you need, and this is what you go to the people with, isn't it? A Well, yes, I think it is an environment that we are trying to get at.

Q It is both a physical and psychological environment, isn't it, when you come in with a new facility and a new program? It is an attitude people get towards the school, isn't it? A I think if you mean by psychological when a young child comes into a school like Salem Church or Robious Junior High School, they are psychologically turned on to education, my answer would be, yes.

Q This would be something that you would support and recommend regardless of what school system you happened to be with, this innovation and educational progress should be maintained? A Yes, sir. Definitely.

Q Do you think, sir, that the people in Chesterfield, which I take it you believe are sincerely interested in education for their children, would suddenly lose that interest in education if their children were assigned to a school somewhere else? Do you think they would still be interested in their children's education? [O-25] A I think any time, if we are contemplating moving children out of a neighborhood where it has become part of a talk, part of

the kind of the living aspect of the family of that community out of that community to another school system, that you would lose some of the feeling that they have for education.

Q Do you think they would lose a feeling for their child and the interest in their child's welfare? A Well, Mr. Lucas, I would hope not.

Q Do you know of any parent that is going to be less concerned about the kind of education his child gets if he is assigned to a school in the City of Richmond than he is if he is assigned to a school in Chesterfield? Do you think he is going to have less concern about his child's education? A I think if you are going to send Chesterfield County children to a school system that purports not to have quality education, they would be concerned.

Q They would be more concerned if this child was going into Richmond, don't you think? A I think they would be mighty concerned.

Q So he would not lose his focus on the school and what was happening in the school to his child, [O-26] would he? His concern, if anything, would be heightened in public education, as a practical matter, Doctor? A Yes.

Q And if all of the people in the metropolitan area were involved in this kind of school assignment, would not the interest and concern of all parents be heightened in the performance of school administrators and how their money was spent and what kind of educational product was being delivered? A Well, I can't speak for individual parents.

Q From your experience with parents in general, tell me as an educator whether or not you think that the

people in this community who have children in school would have their interests heightened and their attention focused more sharply on what was happening in the schools, in the school buildings, in the classroom, in every aspect of school life by the fact that their children were in a situation different from what they are in now? A In Richmond or Richmond child in a Chesterfield school?

You mean both constructive and destructive?

Q Well, don't they—let's just talk about concern. Won't they be more concerned about their child's [O-27] educational future in that school environment? A Well, but the concern takes many aspects. Whether the concern would be first of all whether the child is being transported out of their neighborhood, second of all, whether the child will get the same educational program at the school that they are going into—

Q He would be very concerned about the educational program in the school to which his child was assigned, would he not? A If he allowed the child to go to that school, probably, yes.

Q This is not a new phenomenon, parents are generally interested, it is just that sometimes they pay more attention to the school situation. That has been your experience in public education, hasn't it? A I think my experience in public education would say nowadays we have more interest in education than we have had in the past.

[O-28] * * *

Q Let's just talk about your views. Do you think there is some benefit to be achieved by black and white children going to school together, as an educator? [O-29] A I haven't had previous experience or time to study the research, if there happens to be research.

Q You don't know whether there is any research? A I do not.

Q You don't know whether there is research on the effects of desegregation? A I would know there was research, but I am saying I have not read it.

Q I just want to make sure. A I am sorry, yes, okay.

Q Do you know whether or not there are benefits, Doctor? A I do not.

Q Do you think there are detriments to black and white children being in the same classroom together? A I do not.

Q Do you think that Chesterfield County is some sort of isolated island, or is it really part of the State of Virginia and the United States? A I think—

Q There is testimony here that it was [O-30] surrounded by rivers. Is it really an island or is it part of a community? A I think it is an independent county.

Q Is it part of a community? Are its people Virginians? A Some.

Q Do they live in Virginia, sir? They are subject to its laws. Do you have to report some things to the State Board of Education? A We do.

Q Have you ever come into Richmond to do any business?

* * *

Q Speaking of getting paid, since your testimony in this Court, were you subject to a lot of abuse, or perhaps misunderstanding, about the nature of your testimony here, and did it result in a meeting being called where attorneys

in the case had to come out and explain your testimony, sir? [O-31] A I believe there were such incidents.

Q Now, you testified here that you were hired by the county. You didn't mean to misstate, I am sure, you were actually assigned to Chesterfield County by the State Board of Education, were you not? A I was appointed by the School Board of Chesterfield County.

Q What part did the State Board of Education have in your appointment? Its minutes reflect that you were appointed by it. A I remember hearing those minutes read, but I wondered if it did not mean that I was approved for inclusion on the State superintendents' list.

Q Now, come, those minutes specifically said you and several other people were appointed because of the failure of the counties to employ someone within a prescribed period of time. Now, you just admit you were appointed by the State, as was the first superintendent.

The Court: Is that a question, Mr. Lucas, or a comment?

Mr. Lucas: I am asking him if this is his understanding of the situation about his employment.

The Witness: It is not my understanding, [O-32] Mr. Lucas.

By Mr. Lucas:

Q So the State Board minutes are incorrect, you were not appointed, is that your testimony? A No. My testimony is that I do not know, but I do not believe it is correct.

Q Do you think that the State Board of Education should come in, sir, and reduce all school districts in the

State so that none of them are more than 20,000 or at the most 30,000 students? A I think, off the top of my head, I don't know how to answer that. You are asking, propounding a situation that calls for some deliberation.

Q Well, you gave your view that a school district above that size was really unmanageable. A I said it was a personal reaction, personal feeling.

Q Give to me your personal reaction. Do you think that the State, you as a professional educator, do you think that the State should reduce all school districts to this size which you described as most manageable and the best educationally? A I do not.

Q Do you think that these districts are [O-33] superior to districts that are larger? A I do not.

Q You talked about the process of consolidation and added expense in terms of hiring area superintendents. Do you know that some school districts who have been involved in the decentralization process have actually reduced their staff by reducing central office staff and assigning them to the particular localities or particular regions? A I can't say it is right or wrong. I don't believe it. I can't.

Q You don't know whether it has been done in Detroit, for example? A No, I do not, but I doubt—

Q You just know about Fairfax actually, isn't that true? A Yes, sir.

Q You don't know anything about the decentralization except your one year in Fairfax? A Two years.

Q Two years. How many years were you area superintendent? A One year.

Q Do you know anything about the budgets [O-34] and the long-term effects of consolidation, whether there are any long-term savings that may not be realized the first year?

You mean you were not in charge of school finance in Fairfax County, were you? A I was not.

Q So you are not really familiar with long-range savings that might occur as opposed to short-term, initially, start up costs, is that right? A I am not.

Q If I understood your testimony with regard to the inequality of children is that you should teach the child where he is. This is a term sometimes used in education, you look and see where he is right now. You talked about a diagnostic test and you teach him there and move him along from that point. This is a generally recognized theme in public education, isn't it? A It is.

Q Teach him as an individual, things of this sort? A This is right.

Q You also spoke of your interest in studying year-round schools, team teaching, ungraded [O-35] primaries, things of this sort? A Yes, sir.

Q Are there any reasons that you know of why these things could not be done in a desegregated community school system? A Well, of course not.

Q So that all of these things which you have an interest in you think are good for children and are good and innovative in education you would recommend to the entire schools system if it were a community school system? A If you are talking about Chesterfield County, I have recommended it.

Q And if you were a part of the Richmond-Henrico-Chesterfield school system as a part of a desegregation plan, you would make the same recommendation because you believe they are good and sound, don't you? A If I was ordered by the Court, I would.

Q If you were in the system hired fresh off the street, you would make the same kind of recommendation because you believe in them, don't you? A Mr. Lucas, you don't hire me off the street. I would look into the situation before I [O-36] accepted the position, and under the circumstances that, as I see the consolidated school system, I would not accept the position. I think the education—

* * *

Q Have you changed your mind from your previous testimony when you indicated you would be interested in the position? A I don't remember saying that.

* * *

[O-37] Q You mentioned there were some inequalities in teachers' salaries or some differences in teachers' salaries between the regions. Can you give me what your understanding of the differences are? A Well, as of 1970—'71 school year, there was a difference of—we started at 6,500, Richmond started at, I believe, and I don't have the figures in front of me, 63. I believe Henrico started at 65. There was a difference of maybe two or $300 that would have to be equaled up.

Q Do you think it would be good to pay your teachers more, all the teachers? A I have fought for teachers' salaries for the two years I have been here.

Q Nothing wrong with equalizing teacher salaries? [O-38] A No, but the comment was made to your ques-

tion whether financially there would be a burden on the school system. I answered, yes, because you would have to equal up those salaries to the highest salary paid in the three school systems.

Q Why would you have to go to the highest? A Well, I wouldn't want to be the superintendent to go to the lowest and have a teacher making $7,000 go back to $6,500.

Q Would you like to be in the position of recruiting, looking for the best teachers if you had to pay lower salaries than a surrounding district? Do you think that might affect your ability to get teachers, better teachers? A Depending upon the school systems that surrounded me.

Q All right.

If you were in Richmond and your salary schedule was three or 400 dollars less than the salary schedules in the surrounding county, whatever county, don't you think you would be at something of a disadvantage in recruitment? A Well, I can answer two ways. In the past, the answer would be, yes. In the present [O-39] conditions that we are now under, I had 1500 applicants for 50 positions and I think there are many, many teachers now surplus that are looking for positions.

Q Shortage is over in teachers, is that right? A I believe so.

Q Thank you. I have no other questions.

The Court: Mr. Little, do you have any examination?

Mr. Little: Yes, sir.

District Court Proceedings of September 8, 1971

Cross Examination

By Mr. Little:

Q Doctor, to follow up very briefly on the Fairfax experience you had. You made the reference, I believe, that you felt they had a monster on their hands. Isn't that the word? A I believe that is a direct—

Q Pardon me. A That is a direct quote.

Q Right, sir.

Aren't you—you said Fairfax is providing quality education, or do you have questions as to whether they are providing quality education? A No, I have no doubt about Fairfax County.

[O-40] Q Have you heard, being in the education field as long as you have, that Fairfax has been a source of concern because of the fact it wasn't providing quality education? Have you ever heard any comment like that? A No, just the opposite, Mr. Little.

Q It is doing a superb job, isn't it? A Yes.

Q And you certainly wouldn't recommend breaking up that 133,000 into three separate systems, would you? A You mean three fiscally independent systems?

Q Anyway you want to do it. In other words, do you think you ought to break it from 133,000 down to, say, three 40,000 systems, separate and apart, separate everybody? A I can't see any reason for even considering that option.

Q Fine. Thank you.

How large were the subdivisions up in Fairfax? You told me. A I think 25 to 30,000.

Q And you are aware that under the proposed [O-41] plan that the size of the subdivisions would be, with one exception, the subdivision six of the arrangement, 20,000, are you not? A Yes, I am.

Q So the size of those subdivisions doesn't disturb you, does it? Are they too large or too small, in your judgment? A Well, I can't see any reason for breaking it up into subdivisions in the first place. I think we have three systems of adequate size.

Q But assuming you have a consolidated plan, didn't you say that in Fairfax you thought it was philosophically sound to break that down into areas? A Yes, I am glad that you said I said in Fairfax it was philosophically sound. I did not want to intimate it was philosophically sound in this area.

Q If you had a consolidated system here, consisting of the three political subdivisions, do you think it would be philosophically sound to break that down into subdivisions if you had it? I am not saying that you are in favor of it. A I think, Mr. Lucas—I am sorry, Mr. Little, it is a compliment—if this proposal was to take place, I think a great consideration has to [O-42] be given to so many aspects of the administration.

Q My question to you was that if you break it, if you have a system here consisting of three political subdivisions, would it be philosophically sound to break it down into areas comparable to what they did in Fairfax.

* * *

A I do not know.

Q Fine, sir. We will go on.
Doctor, I am afraid I got a little [O-43] confused yester-

day about poor Matoaca Laboratory School again. You tried to straighten us out in showing what part, if any, the county had in its operation and what part the State had. Then I understood you to say yesterday that it is no longer a part of the Chesterfield school system. A That is right, sir.

Q Well, now, you filed two exhibits yesterday, Exhibit 31 in which it was not listed as a Chesterfield school.

* * *

Q Then there was introduced Exhibit 33 entitled "Chesterfield County Public Schools, Chesterfield, Virginia." You do show Mataoca Laboratory there. [O-44] A For racial composition '70—'71 it was our school.

Q Right, sir.

But your position now is that it is not, right? A It is not my position. It is a fact of policy on the School Board.

Q And let me ask you this. How are the children—you said you talked to Dr. Russell at Virginia State. How is it proposed that those children will be transported to school next year? A The Virginia State College will make ample opportunity for transportation to be available to them.

Q Well, again, sir, there was a statement to the effect that the School Board in Chesterfield, if allowed by HEW, might contract for the transportation of those children. Was there any basis for that statement? A I think in the conversation we had with Dr. Russell that he asked if this would be possible and Mr. Russell, the Board chairman, said if under the guidelines of HEW this was possible, that we could contract, that we would look into that possibility.

[O-45] Q So the chairman of the School Board of Chesterfield said he would look into the possibility even next year, or transporting these children to Matoaca Laboratory, is that right? When you say Mr. John Russell, is that who you are referring to? A John Russell.

Q Right, sir.

In disassociation from Matoaca Laboratory, do you know how the ADA money is going to be paid to that school? A It will not be paid to that school.

Q Have you talked to anybody at the State Board of Education about this? A I have not, but Dr. Russell indicated at our meeting that he had called and did not get an indication that the ADA would be paid.

Q But the State Board, based on your experience with Dr. Russell, the State Board is figuring in this changing of the status of Matoaca Lab? A Well, you look at the situation. We will not claim ADA for those students, therefore the State will not pay ADA to Chesterfield County or to Virginia State College unless Virginia State College is granted ADA, and under the—

[O-46] Q Who would grant ADA? A I suspect the State would have to. Chesterfield County will not.

Q All right, sir.

Doctor, let's go to these two exhibits I made reference to. Do you have Exhibit 31 in front of you? A Well, if you will give me the title, Mr. Little.

Q It is the racial composition of all the schools from '66 through '70—'71. A '66 through '70—'71, yes.

Q Do you have that one, sir? A I do, sir.

Q All right.

As I understand it, the purpose of this is to show the progress that is made in complying with HEW requirements in desegregating the schools, is that what your testimony was directed to yesterday with reference to this exhibit? A Mr. Little, I am not sure because it was at the end of the day that there was a little bit of confusion with exhibits and conversation and I am not sure whether that was the reason for this introduction [O-47] of this particular number 31.

Q Well, you feel you made progress in desegregating the schools out there, do you not, sir? A Yes. I agree we have.

Q All right.

Let's go down a few of these schools, sir.

At Bellwood. Let's take Bellwood Elementary. A Happy to.

Q Isn't it true you had less blacks in Bellwood in 1970 than you had in '69? Is that progress? A If I had more seniors in 1969 and they graduated, this could be more students coming in than graduated.

Q Right, sir. But the fact remains based on your own exhibit, you had less blacks there in '70 than you had in '69, didn't you? A According to the exhibit, if you take numerical order, yes.

Q Well, all right, sir.

Now, what progress has been made at Beulah Elementary where you have an enrollment now of 7,524? How much progress have you made in getting blacks [O-48] into that school, sir?

In 1966 you had two blacks. How many did you have in '70? A Now, when you say did I make progress in get-

ting blacks into school, are you assuming that we bus them from somewhere into—

Q No, sir. I am just asking you, as I understood the exhibit it was to show progress in desegregation. A I don't know if this shows progress.

Q Well, I don't know, sir. That is why I am asking. A According to this we had 1969—'70, two. 1970—'71, two.

Q All right, sir. A I don't know.

Q Same number of blacks? A Same number of blacks.

Q But your enrollment has increased over '69? A Yes. The enrollment 1969 was 494.

Q You had more whites in '70 than you had in '69, same number of blacks? A Yes, we did.

[O-49] Q At Bon Air Elementary, you lost one black there, did you not? A According to the statistics, yes.

Q From '69.

At Chalkley Elementary you lost 15 blacks from '69 to '70, did you not? A We did.

Q How about at Crestwood Elementary that maintains the same? A Maintains the same.

Q You had two blacks out of 806? A That is true.

Q You call that a desegregated school, don't you, Dr. Kelly? A Well, now, we are going to get into terminology.

My feeling is if there had been no unnatural or no stipulations on the part of the Board to exclude or include any

race from the school, then it would be segregated—that it would be desegregated.

Q Well, I am asking you, do you consider educationally speaking, Crestwood Elementary to be desegregated? A Educationally?

[O-50] Q Yes. Educationally segregated. A What does that mean, educationally segregated?

Q Well, we will get into that, sir, with the next exhibit, then, if you can't answer that question. So you don't really know whether Crestwood is desegregated or not, then, is that your testimony? A I have 804 whites and two Negroes.

Q Do you call that desegregated? A Yes, I do.

Q You do? All right, sir.

Now, at Curtis Elementary you lost five blacks there from '69, didn't you? A It would appear so, yes, sir.

Q And Davis Elementary you lost another nine. In fact you lost 25 percent of your black population from '69 to '70, didn't you, roughly 20 to 25? A Davis Elementary went from 43 to 34.

Q Right, sir. That is about 20 or 25 percent of the blacks? A Pretty close.

Q When you get to Enon Elementary, you lost 25 blacks out of 81, didn't you, from '69 to '70? [O-51] A It appears to be so.

Q Now, Falling Creek by your definition was integrated in 1969—'70 because it had three blacks and 961 whites, but even by your definition it wasn't desegregated in 1970, was it? A Well, would you just expound on that just a wee bit?

Q I don't think this is a hard question when you have an enrollment in a school of 1,000 whites and no blacks, wouldn't you agree that that is not desegregated?

Take your time. A I don't need a great deal of time, Mr. Little. I said if somewhere along the line someone had done something to cause the line to be drawn around the school to exclude or include a race, then it would be and then I would say it would be segregated. Here I don't believe any line was drawn to exclude Negroes from Falling Creek Elementary. They are just not in the neighborhood.

Q Well, Dr. Kelly, all I want you to say, and really, sir, you have, as the Court has told you, you can express any opinion you want. I just want you to tell me that in your opinion whether or not [O-52] Falling Creek Elementary School for 1970-'71 was desegregated or segregated, whichever way you want to say it. A Well, I think terminology is important here, but my personal terminology would be desegregated.

Q Desegregated without any blacks? A Without any blacks.

Q Right, sir.

Well, I think we have gone through enough, Dr. Kelly. We will try another exhibit.

Now, let's look at the exhibit that was introduced, number 32. A What is 32, Mr. Little?

Q 32 is Meadowbrook, Thomas Dale, Manchester, Midlothian. I think it shows the involvement of the students in the activities of the school. Isn't that the general line of questioning that Mr. Gravatt asked you? A Well, he didn't ask me any questions on this particular exhibit, but that is what the exhibit shows.

Q Well, is the exhibit designed to show that in these schools that you did refer to here that the blacks are in the mainstream of things, is that the [O-53] purpose of the exhibit?

The Court: If you know.

Mr. Little: If you know.

The Witness: I don't know.

By Mr. Little:

Q Let's look at this a minute, Dr. Kelly, and if you will write at the head of Meadowbrook three percent. Meadowbrook is three percent black. A 2.9.

Q 2.9. We will call it three. Let's be liberal.

Thomas Dale with 11 percent.

Matoaca was 44 percent. Is that close enough? Am I close enough? A Sure, if you round out the numbers, I will agree.

Q You will agree? A Sure.

Q We don't want to be truncated.

Did you make any comparable studies, maybe it is hard to do at the grammar school, but at, say, the middle school? A No, we did not, sir.

Q Now, some of these clubs that are listed [O-54] there I understand, but frankly some of them I don't. I mean Hi-Y and Key Clubs, they are pretty important organizations in the school, aren't they? From a prestige standpoint and school spirit standpoint? A I think every club has lots of school spirit and I wouldn't equate any of these with prestige, but they are important clubs.

Q All right, sir.

And Quill and Scroll and National Honor Society, we all know about that. Pretty outstanding organizations in High School? A When you say National Honor Society, I think I will agree wholeheartedly.

Q A lot of these, the pep club, I don't know what that is, sir, but I guess that is—what is that? A Pep rally clubs.

Q Right.

FBLA? A Future Business Leaders of America.

Q FHA? A Future Homemakers of America.

Q FTA? A Future Teachers of America.

[O-55] Q Fine, sir.

How about DECA? A Distributive Education Club of America.

Q VICA? A Vocational Industrial Club of America.

Q How about COE? A Cooperative Office Education.

Q All right.

I hope I can understand the balance of them.

Now, I want you to look at Meadowbrook, which had a three percent black enrollment, and you show there, I believe, 27 clubs that are named in that left-hand column, don't you? A I didn't add them up but I will concede that is the number.

Q Don't concede it because it is wrong. There are 32 listed there. A 32. I started to add them up.

Q 32 listed there, but at Meadowbrook they have 27 of those? A That is true.

Q And of the 27 where you have a three percent black enrollment, how many are biracial clubs? [O-56] A I think they are all open to any child who wants to join them.

Q I am sure they are open, sir, but how many, in fact, have black and white pupils or members out of the 27? A Six.

Q So 21 of those clubs don't have any black members in them, right? A That is true.

Q Six and 27 we still agree on that? A We can agree on that.

Q All right.

Now, let's go over to Thomas Dale where the black enrollment got up to 11 percent. There are 26 clubs there that are functioning at Thomas Dale, I believe. And of that number you have 21 with black and whites in the clubs, don't you? A 21 is correct.

Q And there are only five clubs that don't have any black members at Thomas Dale, right, with 11 percent black enrollment? A 11 clubs without black members.[*sic*]

Q All right.

[O-57] Now, switch over to Matoaca which has 44 percent black. They only have five clubs there, do they not? A That is true.

Q But where the black ratio is 44 percent, does this not show that there are blacks and whites in every one of the five clubs that they have there? A It does.

Q And even shows that the blacks in two of them are in the majority, doesn't it? A It does.

Q Now, come down to the athletics. Go back to Meadowbrook again which had the three percent black enroll-

ment. How many sports were biracial at Meadowbrook with a three percent black enrollment? A Three out of nine.

Q All right, sir.

Go over to Thomas Dale where it goes up to 11 percent. What percentage were biracial? A Seven out of nine.

Q Go over to Matoaca where they had 44 percent black? A Six out of nine.

I am sorry. Six out of six because they [O-58] didn't have the others.

Q Well, these figures indicate anything to you, sir, about percentages of black in the school and a relationship which they have on involvement in all of these important school activities? A I don't think this proves that.

Q This doesn't prove that? A No, sir.

Q All right, sir.

Down here at the bottom, sir, high school honors in college. What does that mean? A Well, they would be scholarships that have been granted to high schools seniors from civic clubs, Rotary Clubs, maybe scholarships from local colleges, grants to attend colleges. Of course, college meaning those who are enrolled as of our knowledge, and probably I shouldn't say a four-year college, but a college education. It could be a junior college.

Q These are college-bound? A College-bound.

Q College-bound students? A Yes, sir.

Q Let's look at Meadowbrook, then. Do you see any difference where you have three percent black [O-59] enrollment at Meadowbrook and seven percent at Thomas Dale as a percentage of blacks or college-bound go up?

A Well, the percentage goes up and the percentage of college-bound students would go up.

Q All right, sir.

How about over at Matoaca where you have 44 percent black. Does that mean that there are more blacks that are going to college than whites at Matoaca? A You have more blacks at Matoaca than you have at Thomas Dale or Meadowbrook.

Q But relatively speaking, at Matoaca you have 23 whites going to college and 29 blacks, right? A Well, I am not a research man, but 2.9 percent with five going, five Negroes going to college, and 43 with only 29 going, I am not sure if that might not balance off.

Q All right.

You didn't list anything about cheerleaders. Are cheerleaders very important for the morale of the school? A I think Pep is cheerleaders.

Q Is that cheerleaders? A I believe so. It is a part of it.

[O-60] Q I guess that is what the Pep is. All right, sir.

Doctor, I am going to give you a much easier hypothetical here this time.

Suppose, sir, you were the superintendent of just one system in one political subdivision. Don't have any merger problems or anything like that.

You have two schools in that system. Only two schools. They both had grades one through twelve. As far as bricks and mortar are concerned, and the physical facilities, and the plant, they were identical, absolutely identically built. Built the same year, same contractor and everything. Physical plants absolutely equal.

Let's assume that the faculties, the background of the staff and the teachers was identical as far as the number of PhDs and Masters, BSs, and so forth. Let's assume that you have got absolute equality as far as backgrounds, as far as the faculties of these two schools are concerned. The only difference between these two schools in this county is that one of them—they are both one through twelve, is one of them has all-black students and a black faculty. The other one is all white, all-white faculty and all-white student body.

[O-61] Now, if you were superintendent of that system, would you integrate those schools? A You are assuming that I would take a superintendency of two schools?

The Court: Just a moment.
Are you asking him as an educator?

Mr. Little: As an educator.

The Court: All right.

The Witness: Can I ask if the Negroes in the school that is all-black are transported past the all-white school to get to the all-black school?

By Mr. Little:

Q Well, take it both ways, sir. Let's say at one time that all the blacks are going to their neighborhood schools. I will make it easy for you. This will be a little hard to do, but maybe all of them are walking to that school and all of the whites are walking to that school and all of the whites are walking to their school but the schools are only, say, two miles apart. Would you integrate those schools, as an educator? A Well, first of all, educationally you have set up an unsound proposition of one through twelve in one building and one through twelve in another building.

If I had two buildings, I first of all would make [O-62] one K through 6 and the other one seven through twelve.

Q Fine, sir. A And I would mix, I would draw the line so that the children would go to that school whether they were black or white and however the percentage would come out to be.

Q So you would pair those two schools, wouldn't you? I mean, the effect of what you would do would be to integrate those schools, wouldn't that be, Doctor, if you had all the blacks and whites? A Well—

Q How would you keep them segregated if you are going to make one of them K through six and the other one seven through twelve? A They would be integrated. I am not fighting the term.

Q Pardon me. A The situation, if I became superintendent and if I had to educationally look at those buildings, I said I would break them up K through six and seven through twelve. I would then assign the children who were in K-6 from the Negro neighborhood in K-6 in the white neighborhood to the Negro building. Yes, they would be integrated.

[O-63] Q Right, sir. Because you would see educational advantages in that, would you not, sir, for both children, both blacks and whites? A Well, in the situation that you have stipulated hypothetically, yes.

Q Because, Doctor, you don't believe, do you, that segregated, or do you believe, sir, that segregated facilities are—segregated educational schools are inherently unequal from an educational standpoint? A When you say segregated—

Q Well, we will go back to the example I gave you, sir. A I think—well, Mr. Little, you are throwing some other variables into the situation.

If in the situation that you gave me I found the two schools, there is no way in the world as an educator I could leave the two schools.

Q Pardon me? A I say there is no way in the world that I as an educator could leave those two schools as they were presently presented by you.

Q Let me make it easier for you. Suppose they were just two schools, K through six with one [O-64] all-black and one all-white within two miles of each other. What would you do to those schools as an educator? A If they were both K through six and we had no high school, both K through six now—

Q Right, sir. A Well, I would say that if the program in both buildings was educationally sound, if there was reasonable education going on, that I might be inclined until I could find out more information, and let me add just one more thing, that the boundary lines were not drawn to exclude or include any one race, I might leave them just as they are until I could get other information on which to base my decision.

Q Right, sir. You would leave them as they were? A Until I could get more information.

Q What information would you look for, Doctor? A I think I would have to look at many things. First of all, test scores, the faculties in those schools, whether there was good education going on, whether some sort of regrouping might be advantageous, whether the facilities were equal, whether some students [O-65] were being bussed past one school to get to another school again.

Q Right, sir.

Let me do this, then. Suppose with the two elementary chools we are talking about, do you say that under certain acts and circumstances, under certain facts and circumtances, even though they are completely segregated, that hey would not be inherently unequal? A You are saying ecause the school is 100 percent black or white that it is egregated?

Q Yes. A I hadn't assumed that.

Q You just take my assumption then, that you have ot an all-black school and an all-white school, K through ix. Are you saying that it doesn't necessarily mean that he fact that they are segregated makes them inherently nequal? A No, I am saying that.

Q You are saying what? A I am not sure exactly.

Q I don't want to confuse you, sir. A You are throwng both ends at me.

Q At those two schools are you saying that even though hey are completely segregated in the sense [O-66] of havng all blacks in one and all whites in the other that they ight well be providing the same quality and equality of ducational opportunities for these children? A They ould well be.

O-69] * * *

(The Court Reporter read the question as follows:

"Assuming the Supreme Court 17 years ago said that egregated educational facilities were inherently unequal. Vould you, as an educator, disagree with that statement?")

y Mr. Little:

Q Change that word in the question to "segregated but

separate." I didn't mean to say, "segregated." I meant to say "separate." A Inherently unequal, is that what the hypothetical is?

That would mean there would be all-white or all-black schools.

The question is, would I agree with the Supreme Court, would I go along with their law?

Well, of course.

Q Do you, as an educator, do you believe that statement is sound? A Do I believe that it is sound, not whether I would follow the law?

Q I am sure you would follow the law. [O-70] Right, sir. A As far as it goes, yes, as an educator.

* * *

Redirect Examination

By Mr. Gravatt:

Q Dr. Kelly, will you look at the exhibit that shows the racial makeup of each of the schools in Chesterfield County? A Racial composition '70-71.

Q All the years. A Oh, all the years. I am sorry.

Q The one that shows all the years. A I am sorry. Yes, sir.

Q Does that exhibit show—

The Court: Excuse me. That is PX 31 you are referring to?

Mr. Gravatt: Yes, sir.

The Court: All right. I want the record to show.

By Mr. Gravatt:

Q I ask you if all of the Negro children [O-71] in Chesterfield County are attending a school in which the white children are in a majority? A Yes.

Q All right, sir.

So far as you know, is any child in Chesterfield County included or excluded from any school because of his race? A There are none.

[O-73] * * *

Recross Examination

By Mr. Lucas:

Q The example given to you by Mr. Little, you talked about looking at the test scores of that hypothetical school, K through six. Why would you look at the test scores and what would you be looking for? A Well, I think in education the test scores are one of the variables that we use to see if, first of all, if teachers are living up to the expectations that they have for them, whether students are achieving at a given rate. This, of course, would be an assumption that we already had there, diagnosis, already diagnosed for them, and we knew where they stood when they came in. It is a rather nebulous area and I think people in education admit this. But it is an indicator and probably a stronger indicator to parents than it is to educators.

Q You said that you looked at the teachers and the test scores. What if you found a sharp differential between the average test scores in a school in K through six that was 100 percent black and the one that was 100 percent white. What would that suggest to you as an educator in terms of Mr. Little's question? [O-75] A Well, I think as an educator I would, first of all not construe test scores of one

teacher with another teachers or black or white as being indicative of the teaching, the ability of the child to learn. I might want to check one thing. I might want to check if the teacher is teaching every child at the level they came into the class or whether, as we did many years ago, every child's grade was based on the top child in that particular class. If she got 95 out of a hundred questions, she got the A. If I got 75 out of a hundred questions, I got my D, but if I was in a different class, maybe the highest pupil might have been 85 and maybe I would have gotten a B. Again it is kind of nebulous.

Q In terms of the integration to schools, whether or not you would integrate, you said you looked at those two factors? A All right.

Q So what if you found a differential in the achievement levels between the black schools and the white school? What effect would this have on your decision whether or not to desegregate those schools? A Well, it just appears to me as an educator that we are taking in your hypothetical and [O-76] Mr. Little's hypothetical one variable of education.

Now, if after a thorough examination of all of the variables, and again I would want to sit down with research people and some other educators and curriculum specialists and if I found that the teachers at the one school were not giving proper education—

Q Let's assume the teachers are equal, your differential that you have identified after looking at it is the test scores on an average, not talking about on each individual child because there will be a range, but on the average the test scores in the black school or the white school were substantially lower. My question to you is how would you use

this in making your decision as to whether or not you would integrate those schools? A Well, did I indicate that I would integrate those schools if there was?

Q You said before making a decision, those were some of the things you would want to look at. A Well, I didn't mean to assume that if I looked at the Negro school and if grade averages were below normal, that I would then assign by taking those children out of their neighborhood and bussing them across to another school and mixing them with children, [O-77] that within a year or two years or three years or four years that the averages of the Negro children would, of natural causes, because they are now with white children, come up.

Q Well, let's not talk about whether the black school or white school is lower. One school is lower and the other school is higher. A All right.

Q Whether or not you would integrate those two schools doesn't make any difference which one you move at this point. Assuming you would move some of both. A I am not sure.

Q If you found this, let me explain. A Please.

Q I was hoping you could phrase it in your own way so I wouldn't be leading you into anything. A Okay.

Q If you found this sharp differential between the schools— A In either one of the schools, that's right.

Q Okay.

Would this be a factor that would cause [O-78] you to recommend that those schools be integrated? It could be a factor? A But it would not of necessity be a deciding factor.

Q What weight would you give it? A At this point I am not sure, Mr. Lucas.

Q Assuming everything else is equal, you have got this differential and you can't find that the faculties are really different; that they are, on the average, same kind of teachers, same quality of teachers, but you have this differential. We have eliminated the others. A You are assuming that the students in both buildings came in equal?

A Well, I am assuming that the students are achieving at a certain level.

Q As I understood your testimony, you don't believe that they are genetically different? A I do not.

Q So we just have a situation of children whose achievement level on the average is substantially below another set of children in a different school. Would you integrate those schools? [O-79] A Are you saying they are not genetically equal, but you are not saying they come in educationally equal because of background conditions and so forth?

I think if the—it was a reasonable thing for us to do if it was educationally advantageous to do it.

Q My question is, do you think it would be educationally advantageous to do it if you had this differential in achievement levels? A You mean just to integrate the buildings?

Q Yes, put the high achievers and low achievers together in some proportion? A I am not hesitating because I don't have an answer, and I am not sure if given the conditions I have right now whether I would make a final decision on two buildings, integrating them across lines because of test scores. It seems to me that I would

need more information. I am not sure what the information would be at this point, but that would be a cold fact that I was taking to move them.

Again, as I said right at the outset, I would try to get, if they came in equal, I would try in the one school that was—

Q What do you mean come in equal? You [O-80] mean all test at the same level when they come into school, Metropolitan Readiness Tests? A Well, that is where I assumed you were—

Q Well, children don't come into school equal, they vary individually, don't they? A There would be no doubt in my mind that this could not be.

Q Let's assume the normal school situation that you have got this result, you have got a school with substantially lower achievement and one with higher achievement. The question is if they were separated on racial lines, do you integrate those two schools? We have eliminated all these other variables. A I think the integration could take place, but I would not know the number that I would move, the grade levels that I would move. As I said, I think there would be other variables that I would consider.

Q But you would move them? A I think that is a very good possibility.

[O-82] * * *

Recross Examination

By Mr. Little:

Q Dr. Kelly, on Exhibit 31 that Mr. Gravatt just asked you about, Exhibit 31 showing the racial composition of the Chesterfield schools from '66 to '70. That doesn't list all the Chesterfield schools that were operated during those years, does it? A No, does not.

Q In fact, it leaves out all-black schools such as Union Grove, Union Branch, Carver, Kingsman, Dupuy, Bermuda, Hickory Hill, Midlothian, Matoaca, and Winterpock, and leaves out all of the 11 schools that were annexed by Richmond, right, sir?

And four of those schools that are left out, namely Union Branch, Carver, and is it Dupuy or Dupuy? [O-83] A Dupuy.

Q Dupuy and Matoaca Laboratory were operated as all-black schools as recently as June of 1970? A Yes, that is true.

* * *

THOMAS R. FULGHUM

resumed the stand and testified further upon his oath as follows:

Direct Examination

By Mr. Gravatt:

Q Mr. Fulghum, Exhibit 34 was introduced yesterday through Dr. Kelly and some uncertainty developed in respect to what it shows.

First of all, Exhibit 34, as it was filed on yesterday, has an error in it, does it not? A Yes, it does, Mr. Gravatt.

Q Will you state what the error is? [O-84] A The Harrowgate Elementary School.

The Court: I am sorry. I didn't hear you.

The Witness: The Harrowgate Elementary School.

The Court: Yes, sir.

The Witness: As listed on the exhibit yesterday, showed 11 white and no blacks. That should be one black.

The Court: I have got one black.

The Clerk: You have the corrected copy, sir.

The Witness: You have a corrected copy, yes, sir.

By Mr. Gravatt:

Q All right, sir. With that correction, Mr. Fulghum, will you state exactly what this exhibit purports to show? A Yes, sir.

As is stated at the heading, Mr. Gravatt, this is a breakdown of Chesterfield students who attended Richmond public schools immediately prior to their enrollment in Chesterfield County public schools.

For instance, we might have had a senior [O-85] at Thomas Dale High School who attended second grade in Richmond public schools and then came to Chesterfield County public schools and has remained there continuously.

The Court: He would be included?

The Witness: He would be included.

The Court: All right, sir. I understand.

By Mr. Gravatt:

Q In other words, this shows every child in your system who attended a Richmond school the year immediately previous to the year when he enrolled in your school in Chesterfield? A That is correct.

* * *

[O-86] Cross Examination

By Mr. Lucas:

Q How was that census taken? Did you send out a questionnaire? A Yes, we asked the principals of the individual schools to make that determination.

Q Did you send them a form? A We gave them a format to follow, yes, sir.

Q Did they make returns for each child or did they just have one composite list for the school? A They gave us a composite list for the school of how many there were in that particular school.

Q Yet there might have been some ambiguity in terms of the questionnaires, might have been misunderstanding about what was meant, what period you should use as a cut-off period? A We gave them pretty specific instructions as to what to include.

Q Do you have a copy of that form that was sent out? A I don't have one with me.

Q Does it have the instructions in it? A Not on the report form itself, but I am [O-87] sure I have copies of the instructions that went to the principals.

Q Would you make them available, please, sir?

The Court: Are they readily available?

The Witness: Back at my office.

The Court: Can you get them to us this afternoon or tomorrow morning?

The Witness: Tomorrow morning.

The Court: Mr. O'Brion, do you have any cross examination?

Cross Examination

By Mr. O'Brion:

Q Mr. Fulghum, when was this form sent out? A It

was sometime during the past spring, Mr. O'Brion. I don't recall the exact date at this moment.

Q Spring, 1970? A Spring, 1970.

Q Or '71? A Well, spring, '71, yes.

[O-88] * * *

JEANNE C. BIGGER

was called as a witness and, having been first duly sworn, was examined and testified on her oath as follows:

Direct Examination

By Mr. Gravatt:

[O-91] * * *

Q Dr. Bigger, at my request, have you made a study of the 1970 census figures with respect to population changes in the standard metropolitan areas of the United States to show the movement of population to the suburbs and of the proportions of population in the inner city with particular reference to a study of the City of Richmond in comparison to other standard metropolitan areas in the United States? A Yes, I have.

I selected the 65 largest that were reported in this publication, the first page of which I just read.

Q Will you give us a definition, if you please, or the definition, of a standard metropolitan area used by the Census Department? A The criteria for setting up a central city and the contiguous county area as a standard metropolitan statistical area is first of all one of population size, that is, a city must contain 50,000 inhabitants or more; second is the metropolitan character of the outlying counties.

Specifically, first, at least 75 percent [O-92] of the labor force of the county must be in non-agricultural labor force.

Secondly, a county must meet at least one of the following conditions: It must have 50 percent of its population living in contiguous minor civil divisions having a density of at least 150 persons per square mile, or the number of non-agricultural workers employed in the county must equal at least 10 percent of the number of non-agricultural workers employed in the county containing the largest city in the area.

Or the outlying county must be in a place of employment of at least 10,000 non-agricultural workers.

Q Excuse me. A All right.

The third qualification is the non-agricultural labor force living in a county must equal at least 10 percent of the non-agricultural labor force living in the county containing the largest city in the area.

The third criteria is the integration of the central county and on the outlying counties "sufficient economic and social communication."

The criteria here, at least 15 percent [O-93] of the workers living in the given outlying county must work in the county or counties containing the central city or cities in the area and at least 25 percent of those working in the given outlying county must live in the county or counties containing the central city or cities of the area.

Q Now, during, for the year 1970, what did the census show with respect to the changes in population within the city of Richmond? A The City of Richmond, according to its 1960 definition, lost about eight percent of its population. The 1970 population, 202,359. The 1960 population 219,958. By the 1970 definition, through the annexation

of part of Chesterfield County, the City population totaled 249,621 or a 13 percent gain over the 1960.

[O-100] * * *

Q All right. Now, will you state, please, and I ask you again the question that I suppose I asked you to begin with, is the situation that the Census figures show to exist in Richmond in the Richmond metropolitan area, namely that there is a substantial concentration of black people within the central city and a substantial increase of white people in the suburban areas adjacent to the central city, is this substantially the same condition as the Richmond condition, the Richmond situation in this respect, substantially the same as that that exists in all of the other standard metropolitan areas of the United States? [O-101] A Yes, that is true.

Q Now, Dr. Bigger, have you made any effort, professionally, to determine what has motivated people in moving to the suburbs and what has motivated Negro people to stay in the central city? Have you made an investigation of that subject? A Yes, I have.

Q Will you tell us, please, what the results of it are? A All right.

First of all, I did an extensive review of the literature on the reasons for moving in preparation for an analysis of a national study of moving behavior done at the University of North Carolina while I was there.

Your question was in terms of the motivation of individuals. I must confess that at this point that the evidence that I am now to report is what people say is their reason for moving.

The national study, with which I was involved, sampled 1,461 households in the standard metropolitan statistical

areas of the U. S. as of 1960. This was a sample drawn by NORC in Chicago.

First of all, for young families up to [O-102] the age of 30, for families who are, what sociologists call upwardly social mobility, that is individuals who are entering into the early stages of occupational careers for which they expect higher status positions and higher income, the reasons given for moving had to do with needing more space and for their expanding families, for wanting to own rather than rent. These were the primary reasons.

Usually these were moves from the central city to the suburban segments of the metropolis.

Now, if the moves were in the other direction, that is, from the suburban to the central city, usually the reasons they gave had to do with being closer to the job, with needing less space, with needing a less expensive place to be. Usually these were older families, that is on the average, they were in the final stages of family formation with children leaving their homes.

Now, this is across both races, white and black.

In general, Negroes were somewhat more inclined to be dissatisfied with their present dewlling unit, but their reasons for moving usually centered on space, wanting to own instead of rent, and accessibility [O-103]to the job.

Explaining why people cannot move, as you asked me to do in the case of Negroes in the central city, is much more difficult.

Here I found some conclusions and some opinions offered in terms of a study of relocation of families with highways coming through. This is Gordon Fellman's study, and he didn't identify his respondents by race, but his conclusions ran something of this type.

He found that young single individuals and newly mar-

ried individuals who had career aspirations for bettering themselves were glad to move when the relocation policy came through.

The resistance was found among middle-age families, families who had children in school, who had ties in the community.

They did not want to move because they considered this their home.

A second study or set of studies done by Herbert Ganz, leads to somewhat the same conclusion. That all too often social scientists conclude that the physical environment of the central city in our terms is not desirable to the people living there. Ganz protested this and it is his opinion, at any rate, that [O-104] the people who are involved in the social networks in the central city in fact see this as their community and they fight for it.

He infers from this that the reason they do not move is because they consider their house their home and their locality their community.

[O-104] * * *

Cross Examination

By Mr. Byrne:

Q Dr. Bigger, would you state for the record the localities that go to make up the standard metropolitan statistical area known as Richmond? A Yes. It is the central city of Richmond, Henrico County, Chesterfield County and Hanover.

Q Hanover County?

The Court: Where, ma'am?

The Witness: Hanover.

District Court Proceedings of September 8, 1971

[O-105] * * *

Cross Examination

By Mr. Lucas:

[O-109] * * *

Q Are you aware, Doctor, of racial segregation and patterns of housing in North Carolina, Virginia, communities you have lived in? A Yes.

Q Is this an observable fact that you from your own experience know? A Will you state that question once again?

Q Is this a fact that you know from your [O-110] own experience as opposed to scholarly studies? A What did you ask me about?

Q Racial segregation in housing patterns. A Yes.

Q Have you ever done any studies of the effects of racial segregation as affecting housing choices with respect to, first of all, economic capabilities of black people? Let me make myself a little more clear in terms of relating it to child opportunities which may or may not have been restricted in terms of educational opportunities which may have been greater, less. Have you done any studies yourself of the effects of the previous patterns of discrimination on housing choices and mobility? A Study can be used in many ways. I am familiar, as you would guess, with the abundance of literature on residential segregation.

Now, the effects of this are more often the study of race and ethnic sociologists than demographers. I can talk, for example, about the relationship between the caliber of housing in an area and the occupational structure in the area.

Q But you have made no study of this particular field of the effects of race in housing [O-111] choice? A No, I have not.

[O-116] * * *

Mr. Gray: Your Honor, during the luncheon recess, Mr. Lucas and I have agreed to my making this statement to the Court on behalf of the Board of Supervisors of Chesterfield County.

We have caused to be made an examination of the records of Lawyers Title Insurance Company comparing a list of the recorded subdivisions in Chesterfield County with their files of the subdivisions in the county in which lots have been insured by that company and the records which we saw, we have ascertained whether or not the lots are subject to racially restrictive covenants. The investigation reveals that 37 subdivisions with three, 323 lots were found to have racially restrictive covenants. In only one case, [O-117] Patterson Park section, two, a seven-lot subdivision, was the restriction imposed after 1950. All other restrictions were imposed prior to 1950.

It should be noted with respect to one of the subdivisions, Rayon Park, the subdivision plat was recorded in 1928 and contained a thousand and six lots; however, these were only 25-foot lots and do not therefore represent the number of building sites.

Investigation further revealed 326 subdivisions with 14,154 lots without racially restrictive covenants. And we are offering the list of subdivisions with racial covenants as Chesterfield Exhibit 37 and the list without racial covenants as Chesterfield Exhibit 38.

I might say, Your Honor, that we do not represent, of course, that this is all of the subdivisions in the county,

just those that were insured there and that we could find.

Also, it has been called to my attention one of those which we found no covenant, they had found there was a covenant, and this will occur because of different recordations with different sections of the same name of the subdivision.

We have also prepared a map of Chesterfield [O-118] County showing the 1970 census tracts with the total population of each census tract and the black population in each census tract.

We are offering a small map with that information as Chesterfield Exhibit 39.

Using a copy of Richmond School Board's Exhibit 64, which is a map of the consolidated school division, the elementary division, the one we used, using that as a base because it is the same scale as the Plaintiffs' Exhibit 98, which is the color coded map. We used this as a base and prepared an overlay which shows the same census tract information as is contained on the small map, Chesterfield Exhibit 39.

With that overlay, Your Honor, that is on the easel to your left, it shows the census tract information for each census tract in Chesterfield County, total population, the total black population for each one of the census tracts.

We offer that overlay as Exhibit 39-A.

The Court: All right.

Mr. Gray: Now, the Court, upon examination, will observe that there are discrepancies between the information contained on our 39-A and the Plaintiffs' 98, which is color coded.

[O-119] We have also prepared a second overlay, Your Honor, if I could come over there for a moment.

This second overlay, Your Honor, which we offer as Exhibit 39-B, we have just used an arbitrary number of 40. We have indicated in black diagonal stripes those census tracts in which at least 40 Negroes reside in Chesterfield County.

The only purpose being to give the Court at a glance the opportunity to see where Negroes do reside in Chesterfield County.

The Court: Thank you, sir.

Mr. Lucas: With respect to the statement, we want to re-emphasize that this does not include all tracts in the county and does, in the Exhibit 38 where it shows 36 subdivisions, include many duplications in name which, for example, Bon Air Knolls, there are three listings on the second page for Bon Air Knolls, indicating separate developments. One of the developments, Bon Air Knolls, is already in evidence showing restrictive covenants and undoubtedly was an earlier date so that the total may not be the same number if one would add the number of subdivisions by name alone as they are broken down.

[O-120] * * *

JAMES W. WHITLOCK

was called as a witness and, having been first duly sworn, was examined and testified upon his oath as follows:

Direct Examination

By Mr. McIlwaine:

Q Will you state your name, please, sir? A James W. Whitlock.

Q And where do you reside, Doctor? A I live in Nashville, Tennessee.

Q What is your profession, Doctor? A I am an educator.

[O-121] Q What positions do you hold, Doctor? A I am now director of the division of surveys and field services at George Peabody College for teachers. Also director of the center for southern education studies there and hold a full professor's rank in the school of education at Peabody College.

Q And what positions did you hold prior to those that you have just named, Doctor? A I was associate director of the division of surveys and field services, and also associate director of the center for southern education studies just prior to this position.

Prior to that, I was a specialist in school finance for the U. S. Office of Education. Also served as director of school finance for the Tennessee State Department of Education.

The Court: Excuse me, Mr. McIlwaine.

Has a sketch been filed?

Mr. McIlwaine: I was coming to it, Your Honor. The next question.

Doctor, a summary of your vita has been filed in this case prior to this date by attorneys for the State Board of Education and the counties listing your educational qualifications, your publications and [O-122] studies. Is that listing correct?

The Witness: Yes, sir, to my knowledge it is.

Mr. McIlwaine: If Your Honor please, we offer Dr. Whitlock as an expert on the field of educational administration, organization, and finance.

Mr. Lucas: No objection.

The Court: Anybody wish to examine Dr. Whitlock on the voir dire?

He is qualified.

By Mr. McIlwaine:

Q Doctor, have you been employed by the State Board of Education and the counties of Chesterfield and Henrico to study the proposal to consolidate the schools of the City of Richmond, Henrico and Chesterfield under consideration in this case? A Yes, I have.

Q Have you had any prior familiarity with these three separate school systems? A Yes, I have.

Q Would you state what that familiarity is, Doctor? A I can't even remember the exact dates, Mr. McIlwaine, but about 1966, I believe, I participated [O-123] as a member of a three-man team who did a study of staff organization and administration for the Chesterfield County schools.

Within about a year after that I was called back in as an individual to evaluate the business management procedures then followed in the Chesterfield County schools.

About the next year, as I recall, I served as a member of a four-man team that did a similar organization and administrative staff structure study for the Henrico County schools.

Within a year of that time period, I was engaged by the Richmond City schools to do a fiscal analysis of the Richmond City school operation.

Q Doctor, in connection with your studies have you had occasion to visit the schools in the three political subdivisions here involved? A Yes, I have.

Q Prior to commencing this assignment, have you had occasion to be involved in the study of other school consolidation proposals? A Yes. Since 1964 our division of surveys and field services, during which time I was a member of this division, engaged in eight studies where the contract [O-124] called for a feasibility study on the question of merging two or more school districts.

Do you want those listed, Mr. McIlwaine?

Q If you will, please, Doctor. A In 1964 Hopkinsville and Christian County, Kentucky. Also 1964, Paris City and Henry County, Tennessee.

1965, I participated in a state-wide study for the Georgia State Board of Education on school district reorganization in that state.

1969, Lenoire City and Caldwell County, North Carolina.

1970, Kannapolis, Concord and Cabarrus County, North Carolina.

1970, Vicksburg and Warren County, Mississippi.

Also in 1970, Monroe and Union County, North Carolina.

In 1970, Raleigh and Wake County, North Carolina.

Q Doctor, what educational objectives are generally sought to be achieved by a school consolidation? [O-125] A Well, the major objective, Mr. McIlwaine, is to improve the quality of education.

Now, there are some sub-objectives or sub-purposes that apply under this.

In consolidations, the quality of education may be improved by increasing the financial resources available to public education. This would be a case where two school districts with differing or unequal tax bases might be pulled

together where pockets of wealth might be taxed at a uniform rate in order to provide increased resources.

Also, in the improvement of the quality of education, it may be a case of pulling together two or more school districts that are too small on their own to operate efficiently, pulling them together into a single efficiently operating school division.

Another purpose of consolidation would be to make possible the kinds of supporting services that are essential for quality education which could be provided in a consolidated system, but would not be possible in separate school district organization.

It generally purports to make possible the more effective utilization of staff in that we might more effectively utilize the special talents of [O-126] staff.

It purports generally to provide flexibility to organize schools for optimum educational climate for children. There are many sub-purposes, but again the major purpose of consolidation is to improve the educational program, at least the only one that I can accept as an educator.

Q And the factors that you consider important in determining the question of consolidation? A Well, obviously there would be those factors that would help me to see if some of these sub-purposes that I have listed could be accomplished.

Certainly if increasing resources would be a consideration, and certainly in no school consolidation study, depressed resources, where this would offset other gains, we would look at the financial arrangements involved there. Particularly we would try to assess how this consolidation would affect the willingness of the citizens to provide public support.

We would be looking at the size of the school district from the standpoint of total pupil population and how this population might be distributed. Also we would be looking at the geographical area involved.

[O-127] We would attempt to assess the ability of a consolidated system to preserve the strong features of each component system, for again, if the quality of education is to be improved under my criterion of adequacy, it must be improved or at least not lessened for any boy or girl involved, and we need to be sure that this consolidation doesn't level down in the process of equalizing opportunities.

Opportunities would have to be equalized, in my opinion, in a consolidated system. We would want to be sure they are going to be equalized upward in every case.

These are some of the factors we would consider.

Q Now, do you find in a proposed consolidation, that the proposed consolidation of the Richmond City, Henrico County and Chesterfield County schools would be educationally advantageous or disadvantageous? A It is my opinion, Mr. McIlwaine, that this consolidation would be educationally disadvantageous.

Q Would you give us some of your reasons for reaching that conclusion, Doctor? A All right.

First, I believe that adequate financial [O-128] support is crucial to the provisions of quality educat[illegible] of program in any school division. It is also my opinion that the kind of financial support essential to achieving that quality would not be provided under the governmental arrangements which would prevail, as I understand them to be, under this consolidation.

Reference has already been made in this Court to the fact that under the proposed consolidation a single School Board and a single superintendent would be answerable to three different political bodies, three different governmental units for school revenue.

I believe this to be completely contrary to what is acceptable educational practice in this country where a large majority of all school boards are physically independent of any fiscal body in setting their school budget in at least levying a tax rate up to some maximum above which they might go with a vote of the people.

Secondly, and this I think has always been mentioned in testimony in this Court, as I understand Virginia law, these three fiscal bodies would exercise budget, major budget item control in that they could simply reduce a budget request for each of the major budget items.

[O-129] I would contend that this, in my opinion, would certainly breed chaotic budget and fiscal planning and also would offset, I think, any chance for uniformity in the school program as we would seek to achieve an equality of educational opportunity because it may well be that these three fiscal bodies would have differing views as to the priorities in education.

One might believe, for example, that a strong administrative staff is very important. Another might think this really has little bearing.

One, for example, might think that great emphasis should be placed on vocational education while conceivably another might deal differently. The point is, with this kind of budgetary control, I could not see that a school board being able to plan with any certainty as it would look ahead in the kind of budget and fiscal planning that a school board must do if it is to operate effectively.

Then, thirdly, I believe certainly important to getting the kind of financial support that I believe schools must have, is an arrangement that would keep the fiscal body responsible for providing the revenues directly responsible in some way to the people whom it serves and under this arrangement, citizens in [O-130] one of these school divisions would have no recourse, as I understand it, on the actions of the fiscal bodies in the other two divisions, but the actions of those fiscal bodies would directly affect the education of the boys and girls of the citizens in the third division.

I would also suggest that as I have looked at the three school divisions, that they differ in ability to provide for public education to some extent. I think if we take the true property values of the three divisions for 1970-'71 with annexation figures there, that the ADA of the past year and convert that to true property value per pupil, which is one measure of ability, I think we will find in rounding it off that Richmond City schools would have roughly 32,000 dollars of true property value per pupil as compared to 28,000 dollars in Chesterfield. Some substantial difference there.

If we look at the one cent local sales tax, which is returned in the same form in which it is collected locally, and thereafter, I believe, becomes in effect local revenue, I think we will note that the revenues, at least estimated for the subdivisions this year, would provide 175 dollars per pupil for Richmond and only some 25 to 26 dollars per pupil in Chesterfield.

[O-131] Henrico would come in between there.

So if, when we look at the differences in ability, if we look at the differences in outstanding bonded indebtedness, again if we convert the present bonded indebtedness to

pupil measure, I think that we can see that Chesterfield has about four times the outstanding indebtedness per pupil that Richmond would have and Henrico again would be somewhere in between. But these differences in ability, differences in need, at least as expressed in terms of outstanding debt service, to me would simply complicate any kind of a contractual arrangement for sharing these necessary revenues among three governmental units that would be both fair and understandable, and therefore both fair and acceptable.

Consequently, it would be my opinion that you would be almost in constant disagreement on this subject. It would almost take constant arbitration on the part of someone, and I just don't think that that is the kind of climate for getting the best support for public education.

Q Do you believe that these differences would have some risk of adversely affecting the support for the system?
A Yes, I do.

[O-132] I realize that has always been mentioned before this Court, but I have looked at this hard and thought about it and tried to evaluate it in the light of some recent experience that I have had. And I do believe that consolidation would run the grave risk of adversely affecting the willingness of citizens to provide funds for public education. And if this were to happen, I would go on to say that I think it would be very unfortunate because I believe there is evidence here to show that the citizens of each of these three divisions have compiled an outstanding past record in local support of public education.

For example, if we look at the local fund per pupil raised in Chesterfield in 1960, it was $132. 1969-'70 that had been increased to $331. That is an increase of 151 percent.

Henrico County raised $196 per pupil locally in 1960-'61. In 1969-'70, they raised $410, a percent increase of 120.

Richmond City raised $282 per pupil from local funds for current operations. We are talking about now in 1960-'61, and that has been increased to $501 in 1969-'70, an increase of 78 percent.

So putting it another way, both Chesterfield [O-133] County and Henrico County have more than doubled their expenditure from local funds for current operations in the last ten years. Richmond City has almost doubled, and if we compare this effort with the effort being made by other school divisions or school districts in the nation, and use a rather common measure for estimating ability, I think you would find that Chesterfield County's ability on this common measure would range well in the upper quartile of all school districts in this nation and Henrico County and Richmond City would come well above the median of the mid-point of all school districts, if they were ranged on this measure of effort.

So I would say, then, that certainly if this consolidation were to adversely affect the willingness of citizens, it would be unfortunate because of the very healthy condition that I believe that local support for public schools is now in in each of these three divisions.

Also, I would point out that this record which I think is outstanding, has been compiled certainly in the last two or three years in face of what I believe to be a national trend toward taxpayer revolt for providing all governmental services, and particularly for [O-134] voting higher taxes and bond issues for public schools.

I think we could show that certainly within the last two years the data will show that one-half of all school tax issues presented to the vote of the people, have been defeated.

If we look at the first quarter of this year, 1971, look at the bond issues that were presented to the people, there were 248 in this country. More than half of them were defeated.

If we look to the dollar amounts, the voters approved $148 million the first quarter of this year while denying $317 million.

So for every $1 of school bond tax or school bonds revenue that has been approved, $2 during the first quarter were turned down.

I think there is evidence to show that the increasing number of tax issue defeats has prompted talk of school closing in several states. I could cite Ohio and Oregon and Washington as examples. Our educational associate reports that three-fourths of the 50 Ohio bond proposals on the May 4 of this year's ballot in Ohio, because this vote at that time was state-wide, three-fourths of the 50 went down to defeat. 66 percent of the 62 new school money issues outside of school bond [O-135] issues also went down to defeat.

In Oregon, the voters turned down school budgets for seven of the state's ten largest school district.

In Washington State, National Education Association investigating committee reports that 1400 of the state's 40,000 public school teachers have received termination notices as a result of tax levying defeats.

Michigan Education Association reports that 5,000 Michigan teachers have been "pink-slipped" and were not employed at the start of this school year because of tax levy defeats.

I could go on to cite you statistics to show you the split of the large cities. New York, Philadelphia and others. I think this would give, hopefully, the picture nationally.

[O-135] * * *

Again, to emphasize that if there was ever a time when we need to avoid doing anything that would upset what appears to be a very healthy local tax support situation, I think that time would be right now.

Q Would the willingness of the people to support a system have any effect on the proposition of bond issues for capital outlays, Doctor? [O-136] A Yes. It certainly would, in my opinion, Mr. McIlwaine.

Obviously, the willingness of the citizens to support tax issues would affect the willingness of fiscal bodies to make appropriations because that comes obviously from tax sources.

But even more directly, the people, and particularly the people in Virginia, affect the money provided through bond issues because they must vote them in referendum.

And again I would share the opinion that has, I believe, already been expressed in this Court, that it is very unlikely that a bond issue could be expected to pass in particularly the counties if at least in the immediate future this consolidation goes through.

I would also point out if this is the case, it could conceivably create what I would think would be a grave situation in education.

I have received estimates which I have checked the best that I could, and believe to be conservative estimates from the staffs of both the Henrico County School Board and the Chesterfield County schools, and have received estimates of school building needs, [O-137] counting present and those in the next ten years, that will have to be provided for in new bond issues. This is not counting the 17.7 million dollar bond issue that has been approved in Chester-

field, but is yet to be sold. This is additional building that would be required that would require new bond issues.

I received an estimate of $49 million including additional bond issues in the next ten years for Henrico County and $50 million for Chesterfield County, a total then of approximately $100 million estimated to be needed in the next ten years. And this, I think, would emphasize the gravity of doing anything that would upset the willingness of people to vote bond issues.

I think reference has already been made to the fact that the last bond issue in Chesterfield County passed by only some 200 votes. I think this would illustrate just how easy it would be to tip over this situation. And certainly 200 votes could be swayed very easily. It is delicate. I guess my plea is that we don't do anything to upset the situation at this time.

Q The estimates that you received from the counties, Doctor, were they detailed with supporting data, the $49 million and the $50 million? [O-138] A Detailed from the standpoint of supporting enrollment data and, of course, I could convert from that an average cost.

I was able to check that against some average being costs in the State of Virginia, which I am sure tend to be lower than what they had been in this metropolitan city and in the two counties that would adjoin it.

On the basis of this, with nothing built in there for inflation, and we would all hope that inflation has been curbed, but if it hasn't, these are on what is considered to be cost estimates as of this time and could well be conservative if inflation does continue to push up school building costs.

Q Now, Doctor, if the school system were to be consoli-

dated, would that, in your opinion, require more money or less money for the operation of the consolidated system? A Well, Mr. McIlwaine, I believe that despite what I think to be the certainty that local school revenues would be adversely affected in the event of consolidation, I think to be educationally acceptable it would require more money.

Again, I think that I would remind you of [O-139] the criterion that I requested earlier, that to be acceptable, we must preserve the strong components of each of the component—the strong features of each of the component school systems which means again a leveling up process.

If we must make it uniform averaging down, then I would have to certainly strongly oppose any consolidation that has that as a result. I don't believe the citizens would certainly, if you will pardon me, stand still for anything less than uniform treatment of all boys and girls within a consolidated school district.

So we must level up. I would suggest to you in the consolidation of any two school divisions in this country you are going to find differences. Certainly when we put three together, we are going to increase the possibility that there are differences that are going to have to require the leveling up process.

Just as an illustration, I have been advised that Henrico County does not have kindergartens. I think in the event of consolidation immediately there would be the pressure, and justifiably so, to provide kindergartens for Henrico children.

Although some of this would be offset [O-140] with State funds, this would be an immediate local expenditure for both capital outlay and for current operating expenses.

As I look at certain statistics that would indicate the number of administrative personnel per thousand pupils,

the number of health personnel per thousand pupils, the number of secretarial and clerical personnel per thousand pupils, the number of operational staff per thousand, and the number of maintenance staff. These cold statistics that would show a difference presently in the number of these kinds of pupil per rough unit of measure of need, and see that there are differences.

Then this leads me to believe that among the three districts or divisions now would be differing standards in allocating such personnel and therefore, assuming the pressure would be to equalize and, again upward, I think all of this is further evidence, although admittedly I haven't made the detailed study that would enable me to say it would take X millions of dollars to do this, the point simply is for the consolidation to be educationally acceptable, it would require, in my opinion, additional resources.

Q Doctor, do you know of any educator in the country who differs with the theory that in a [O-141] consolidation or with the principle that in a consolidation division between systems that it must be leveled upward, not averaged out? A I certainly know of no one who has had the courage to advocate that.

Q Now, if these increased costs, Doctor, is there a possibility that the consolidation of these three divisions would in some way offset the, or render feelings that would offset the costs? A Mr. McIlwaine, I do not believe—I am not saying that there wouldn't be any increase in efficiency. Conceivably I have overlooked something. Certainly I can say very sincerely that I believe that no significant savings could result here, and certainly I can state very specifically that the increased costs, as I see required here, could not be offset by any greater efficiency that would result from consolidation.

Reference has already been made to the fact that this consolidated division would have six sub-areas. I am assuming also if it follows the pattern of many of the larger school systems, that the need would be then to decentralize into those areas with some type of area staff which would include an area superintendent [O-142] and other supporting staff in each of these six areas.

And I think that alone could conceivably offset any economy that would be effected here.

I am just not sure, frankly, that any economy could be effected at all, but certainly not enough to offset this.

I believe this primarily because the research base that I have studied would seem to indicate that a school division of somewhere between 20 and 50,000 pupils, and I realize this is not definitive, it is a broad range, but it certainly would place each of these three school divisions separately within a range that a school division within this range is of optimum size to provide services and programs economically. And I think I can back that up by the research, by my own experience of having worked in several school districts or divisions whose size would go well above 50,000, and have seen just the problems of the large school district operating there even where some decentralization had been tried. Certainly particularly where no decentralization had been attempted.

I could cite cases and even, at the expense of calling names of school districts if this is required.

[O-143] Q Doctor, would the reasons that you have just given why you would not advocate the consolidation that is proposed here, would they be applicable to a consolidation of any two of the three divisions here involved? A Yes, I think it would be, Mr. McIlwaine.

* * *

Q If you were asked to consider a consolidation of Richmond, Chesterfield County and Richmond and Henrico County— [O-144] A I would recommend against either of those two alternatives.

Q Doctor, in your experience, have you ever recommended any school consolidation of any size in which the resulting school divisions would have more than a single tax base? A No, sir, I have not.

Q To your knowledge, has anyone ever recommended such a consolidation? A I know of no one who has.

Q To your knowledge, has any expert in this field in the country ever recommended the consolidation of three separate political subdivisions into one school division with three separate bases? A I certainly know of no one who has.

Q Doctor, you have viewed the metropolitan plan and under that it proposes to arrange the systems so that there will be a racial proportion of 20 to 40 percent Negro in each of the schools in the system? A Yes, I have.

Q Laying this factor aside for one moment, do you find any educational advantage, any single educational advantage, which would lead you to recommend the merger of these three divisions? [O-145] A I do not.

Q During the earlier testimony, Doctor, I asked one of the witnesses about the optimum size of school divisions and mention was made of the Nashville-Davidson school division and the Memphis school division. Do you have some familiarity with these systems? A Yes, being a Tennesseean and living in Nashville, I think I do.

Q Would you comment on the Nashville-Davidson and Memphis system. A Well, the Nashville-Davidson

County, which is now a single metropolitan school system, was brought about through the merger or the consolidation of the governmental services of Davidson County and Nashville City into a single metropolitan political unit. So this is a case where all governmental services were unified under metropolitan government. Obviously, the schools were, but again this was a case where two school districts or systems, as we would call them in Tennessee, came under a single governmental unit with a single taxing authority.

Memphis is a part of Shelby County, as all cities would be in Tennessee. The Memphis school district operates independently. Therefore, I would not say that Memphis is a metropolitan school district in this [O-146] context because Shelby County operates a separate school system.

Q Did Memphis have approximately 100,000 or over 100,000 people as far as you know? A I believe Memphis would have probably 130-135,000 pupils now. I would guess Shelby County, this is a guess, maybe 30,000. I am sure Mr. Lucas will correct me on that if I am wrong.

Q The Memphis situation isn't a case of consolidation at all? A Not on this point, no, sir. Maybe in some annexation that is affected, but not consolidation.

Q There was also mentioned, Doctor, with respect to the optimum size of school divisions, A Great Plains Study, an indication that at some point 100,000 pupil system was an optimum size. Have you reviewed that study or are you familiar with it? A I have read a summary of the study, Mr. McIlwaine, and this study is more a study of the optimum size of school districts.

I might say for what? Because it gives differing optimum size for different purposes.

For example, it concluded that a school district of 20,000 would be roughly optimal for providing [O-147] specialized services and administrative services. It concluded that a school district ought to be somewhere between 30 and 50,000 to provide the most economical business operation for schools.

It concluded that for special education services, at least 20,000 would be needed. It did conclude that for data processing in education, that a school district should probably have as many as 100,000 pupils.

As I would look at the research, this is the only reference that I can recall that recommended above 50,000 as the optimal size of a school district for any purpose.

Q Do you have some expertise in the field of data processing in education, Doctor?

Have you written articles about it? A I would like to feel that I do. I have one book published by the McMillan Company on electronic data processing in education. I have co-authored another. I have written numerous others.

My feeling is that in the first place I think that each of these school systems would be large enough to justify their own computer installation. It is my understanding that possibly in one case one of [O-148] the counties would be sharing the computer services now with the county. This certainly would, if that is to be the arrangement, would even argue even more strongly that as a separate unit they can afford such data processing.

If anyone would argue to the contrary, I would simply have to insist that if there is an advantage in this connection, it is not necessary to consolidate the school districts in order to achieve that advantage. There could be many cases where computer services could be shared on a cooperative basis. Particularly where the reference was made,

I think by one witness that I listened to, that it would be advantageous from the standpoint of computer-assisted instruction where the computer in effect acts as a giant teaching machine.

I would simply remind you that this is done through the use of rather remote terminals where a student has access to some input-output device and the computer could conceivably be a hundred miles away. So if we are talking about computer-assisted instruction we probably ought to think in terms of half of the State of Virginia.

And again, it would not be necessary to consolidate the school divisions in order to work out [O-149] some arrangement where the computer could be used to assist instruction.

Q Doctor, it has been alleged in this case that the political subdivision lines between Richmond, Henrico and Chesterfield served no valid educational purpose that could not be served equally well by some other configuration. In your opinion, do these subdivision lines have a valid educational purpose? A Well, I think my answer is obvious since I have tried to show that abolishing them would certainly, in my opinion, be very educationally unsound, then obviously the lines, as they are now drawn, in my opinion, must have some real educational significance.

[O-150

* * *

Cross Examination

By Mr. Lucas:

Q Did you furnish the information to the State Board of Education for your vita that was filed with the Court? A Yes, I did.

Q A list of references that you would rely on and so forth? A Yes, I did.

Q Did you mention anything in there about the studies of Chesterfield County? A Yes, that was listed in the vita sheet.

Q Did you have any written reports from your studies? A We have in each case a mimeographed report that would be on file in my office, and I am sure available in each of the counties unless they have—I hope they didn't think so little of them that they have [O-151] thrown them away.

Q How about the City of Richmond, did you list that? A I am not sure that that was listed on the vita sheet. I can't be sure of that.

Q It was a written report, wasn't it? A It was a mimeographed report that I presented to Dr. Little and his staff and the superintendent at that time and made an oral report on the basis of that. But it was mimeographed. It was not published.

Q How large a school system is Nashville—Davidson County? A Has 90,000 pupils.

Q How about the system, give me the date if you will, when it went metro? A I believe it was 1963, I am sorry, '64.

Q Were you in Nashville at the time? A Yes, sir, I was.

Q Do you know the superintendent, whose name escapes me, who recently died? A Dr. John Harris recently died.

I think by one witness that I listened to, that it would be advantageous from the standpoint of computer-assisted instruction where the computer in effect acts as a giant teaching machine.

I would simply remind you that this is done through the use of rather remote terminals where a student has access to some input-output device and the computer could conceivably be a hundred miles away. So if we are talking about computer-assisted instruction we probably ought to think in terms of half of the State of Virginia.

And again, it would not be necessary to consolidate the school divisions in order to work out [O-149] some arrangement where the computer could be used to assist instruction.

Q Doctor, it has been alleged in this case that the political subdivision lines between Richmond, Henrico and Chesterfield served no valid educational purpose that could not be served equally well by some other configuration.

In your opinion, do these subdivision lines have a valid educational purpose? A Well, I think my answer is obvious since I have tried to show that abolishing them would certainly, in my opinion, be very educationally unsound, then obviously the lines, as they are now drawn, in my opinion, must have some real educational significance.

[O-150 * * *

Cross Examination

By Mr. Lucas:

Q Did you furnish the information to the State Board of Education for your vita that was filed with the Court? A Yes, I did.

Q A list of references that you would rely on and so forth? A Yes, I did.

Q Did you mention anything in there about the studies of Chesterfield County? A Yes, that was listed in the vita sheet.

Q Did you have any written reports from your studies? A We have in each case a mimeographed report that would be on file in my office, and I am sure available in each of the counties unless they have—I hope they didn't think so little of them that they have [O-151] thrown them away.

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Q Were you in Nashville at the time? A Yes, sir, I was.

Q Do you know the superintendent, whose name escapes me, who recently died? A Dr. John Harris recently died.

Q Did you know Dr. Harris well? A Not personally.

[O-152] Q Do you recall his numerous speeches and talks about the process of merging the two school systems? A I know that he made some talks. I am not sure what he said.

Q Do you recall him describing his job as merging four school systems, a black one in the City of Nashville and a white one in the City of Nashville and a white one in Davidson and a black one in Davidson County? A No, I do not recall him saying that.

Q Peabody Institute makes a number of studies upon requests for various governmental units and so forth? A We do.

Q At the time they made their study in Memphis, Shelby County, and recommended consolidation of the two school systems, the combined school system would have been 109,000? A Right.

Q Does that fit your recollection? A That was six years before I had any connection with the division of surveys and field services.

[O-153] Q But that division did make such a survey? A That's right.

Q And such a recommendation? A That is true.

Q Is that correct? A Could I comment on that?

Q Please. A I did have some knowledge of that in that I was director of school finance for the State Department of Education.

I would remind you again that this was a merger, recommended consolidation of two units into a single govern-

mental unit which, in this case under Tennessee law would have been in effect a county unit with a single taxing body.

I would also remind you—

Q Would have been two separate political subdivisions, wouldn't they? A As far as school financing, it would be one after consolidation.

Q Two political subdivisions, is that correct? A After consolidation?

Q Right. [O-154] A As far as financing goes, no.

Q Two governmental units in Memphis and Shelby County, would there not—the study only dealt with schools and not the Nashville—Davidson County situation? A I would remind you that we do have under the permissive legislation in Tennessee, a consolidation of Montgomery County and Clarkesville City where the Montgomery County Court or fiscal body is responsible for the revenues for the school.

I would also point out that, not trying to justify this recommendation, but trying to point out that in every case the division's survey and field services attempts to look at all factors. We don't just have one simple pat remedy. Certainly you couldn't anticipate always what the division is going to recommend, but in this case, there was a continuing squabble between Memphis City and the County on the split of the county-wide levy between the City, and I am sure this again, this kind of uncertainty along with possible annexation must have influenced the division recommendations. But this was six years before they even knew that I existed and I was not connected with it.

Q Well, let's get up to date. Are you aware [O-155] the federal Court required Memphis and Shelby County

school systems to assign students across the system lines for the purpose of desegregating schools in respective systems? A I was not aware of that, no, sir.

Q When was the last time you were back in Nashville? A Back in Nashville?

Q Yes. A I was there Friday, Saturday and Sunday.

Q How many days have you been here? A I have been here, you mean this time or all told?

Q No. Have you been here for every day of the trial? A No, sir, I have not.

Q What days were you here? A I heard the testimony of Dr. Pettigrew. I believe I can describe it better in that way, what I remember hearing in those days. I heard the testimony of Dr. Pettigrew. I think I heard all of his cross examination. I believe I only heard part of the direct testimony of Dr. Carmichael. Did not hear any of his cross or Dr. Nixon's direct or cross. I have been back [O-156] and spent only last Tuesday, Tuesday of last week here, during which time the witnesses were not dealing with educational matters and I stayed in the hotel room and attempted to work.

I have been here all this week. I have heard, of course, the local educational witnesses. Hearing part, also, of Dr. Blount's testimony. That roughly is what I have heard.

Q Are you aware that in Crockett County, Tennessee, there are seven school districts with separate taxing authorities and separate boards, separate superintendents that are operating as one system? A Yes, sir.

Q For the purpose of desegregation? A And I could say to you, Mr. Lucas, that Tennessee can furnish you a horrible example of most anything.

Q Do you think it was bad to desegregate that school system? A Do I think it was bad to desegregate it?

Q Yes. A No, I think I would be all in favor of it, and if this Court—

Q You think it ought to be consolidated, too, [O-157] in Crockett County? A Certainly I do. And if this case involved the merger of those six, special, six or seven special school districts with the County of Crockett, you wouldn't find me arguing on this side of the question.

Q All right.

Are you familiar with any school districts in Arkansas that have been required to merge because of separate districts in terms of racial composition? A No, sir, I am not.

Q How about Texas? A Yes. Familiar with a recent Texas decision where I believe some ten districts were required to merge. But those were districts that varied in size from ten pupils to 200, I believe, and again would be joined in Texas as terminology in a school system where I think in every case the School Board would be answerable to only one fiscal body, or in some cases not even the fiscally independent. I don't remember.

Q Peabody recommended the merger of the counties in the multiple school units in two or three counties merging into one school unit to the Georgia legislature, did it not? A Yes, it did.

[O-158] Q And do you know enough of the details

to tell me how many school districts there would have been in existence before and how many did you recommend it ended up with? A As I recall, and again I served only in a minor role there, I was called upon to do some financial analysis to test the feasibility of the recommendation there after they were made. I was on another assignment at the time. As I recall, the districts were to start roughly with the way the State was divided for senatorial, State senatorial districts, I believe would be about 26 or 7, roughly. In every case, though, the standards set there was for a school district of approximately 20,000 pupils. The conclusion of that staff being that 20,000 was ample to provide the kind of specialized services that a school district ought to have.

Q These were mostly rural areas, is that correct? A Yes, sir, they were. My role was simply to look at each of the counties and to test the differences and ability to see where it would be practicable to put some counties together where the ability did not vary so much as to offset or to build up resistance to it with outstanding body indebtedness pretty well equal [O-159] simply to test the recommendation after the staff had made it.

Q The purpose of the recommendation was to increase or equalize educational opportunities, was it? A Yes, and to make the operation more efficient because Georgia counties were with as few as 2,000 people, as I recall.

Q Can you put a cost analysis to everything you do in education? A No, sir. I don't mean to imply that I can.

Q I didn't suggest that you were. I am asking you, sir. A No, I wouldn't want to do that, but it certainly, you

can ignore the cost and certainly, because of the importance of financial support to me, it has to be a prime consideration, and this is the reason I have started with this.

Q Let's take a look at Virginia. What if the Board of Supervisors in Chesterfield County was hopelessly split, you could never rely on anything you got out of them in terms of your budget, they would have the same problem regardless of whether they were [O-160] a consolidated school division or just dealing with a one and one situation, one district and one Board. You would have that same problem. A No, sir, I don't think you would quite have the same. The people of Chesterfield County could vote them out of office and get that situation straightened out.

Q Well, don't you think if you had a bunch of uncooperative people holding up the education of the whole school community, that the people responsible for that situation could be voted out, just be a larger voting area, wouldn't it? A Well, it would have to be done in concert among the three subdivisions.

Q Well, you could get two boards willing to cooperate and one that was not. That is certainly possible, isn't it? A I am not going to say anything is impossible in this day and time.

Q Well, it happens, doesn't it? A I suppose it does although I would be hard put to cite an instance.

Q If you were a Chesterfield County parent and you had your children in the City of Richmond schools, [O-161] or what used to be the City of Richmond schools, and you were concerned about what goes on there, and the people on the Board of Supervisors in Chesterfield County, because of the traditional hostility, paranoia, if you will,

about what goes on in Richmond, they are refusing to cooperate because somebody who was, say, a representative from the central Board for Richmond has suggested it, and this is what is going to affect the education of your child in that school inside the city limits of Richmond, don't you think you, as a parent, would have the same beef with the Board of Supervisors' representative from your district as you would if you were talking about a school in Chesterfield County? A I would have the same beef. Whether or not I would have the same influence—

Q You would have the same voice as far as that supervisor who was causing the problem, wouldn't you? A Not if that supervisor causing the problem was in a division—

Q But if he was in Chesterfield County, you would have the same beef? A Certainly, if he was in Chesterfield.

Q And if the students from all three [O-162] divisions were crossing into each other, you would have students from Henrico into the city area of Richmond and Richmond children out into Henrico. You would end up with an even stronger community of interest because what happened to any child in the district would affect all children in the greater school community, would it not? A I would not conclude that. I would hope that if this goes through, that's right, but it is my opinion that it would not be.

Q Well, I would imagine you would have some problems, but what I am asking is in terms of the effect on the children if the school districts or the boards of supervisors are not cooperating for some reason, do not the parents in each of the three political jurisdictions have the

same interest in securing people who are willing to cooperate by the electoral process, as you suggested, as they do if they are in Chesterfield County, or City of Richmond? And you are talking about councilmen for Henrico, or for that matter, aren't the interests the same?

Mr. McIlwaine: If Your Honor please, I think the question is assuming something that is not in fact, that the people in one division could vote for the representative in another.

[O-163] Mr. Lucas: I think that was suggested.

The Court: I don't think he intended that, Mr. McIlwaine. He may continue to examine, although I am frank to say I am not going to go on the assumption that parents anywhere aren't going to take an interest in the education of their children. What they do is something else again. But go ahead.

The Witness: Certainly they would have an interest in their children, but I think I would point out that when I have attempted to cite this national trend that I think is under way, this is not to imply that parents do not continue to have an interest in their children, even though they are voting down tax issues. I think it would simply indicate, we are at certainly an age of commonly referred to as accountability in education where many citizens are beginning to question what schools are doing and begin to question whether they are getting value for the dollars, and even though they are interested in the school, since they have no choice but to keep their children in public schools that frustration that they are facing, I think, is causing them to vote against tax issues.

I think the same kind of concern and [O-164] frustrations that could well develop here would bring about—will

bring about that adverse willingness even though they are still just as vitally interested in the children as they were before.

Q Well, they knocked out or refused the part of the bond issue in Henrico for kindergartens? A I understand that, yes, sir.

Q And in Chesterfield, you were here when Dr. Kelly testified this morning? A Yes, sir.

Q You heard him read the vote totals for the bond issues? A Right.

Q Showing lopsided majorities in favor in recent years? A Yes. I was impressed with that.

Q And the last one, as you yourself noted, was only 200 votes. You came within 200 votes of joining that great majority of districts you are talking about? A Yes, I think that is the point I have made that it would be very easy to tip this over.

Q The State now requires everyone to have a kindergarten under the new standards that they haven't set the final date, so you were talking about one of [O-165] the problems of consolidation would be there would be a demand for kindergartens and this would be a demand they would have to fill no matter whether they are going to stay separate or get together. A Well, it is my understanding these standards are yet to be approved by your legislature.

Q They were adopted by the State Board of Education, were they not? A Yes.

Q Do you think it is bad to upgrade these features such as teacher salary, such as administrative personnel? A Certainly—

Q This is generally what educators are for? A Certainly I do not. This would be great. The only point I am trying to make is that in the face of what I think to be depressed revenues, there would be the urgent requirement that this be upgraded. This is the only kind of consolidation that I could buy, educationally.

Q And I want to make clear that you are talking, you say there will be additional costs, and that you think there is a problem raising the money [O-166] or not, saying you think it is bad to do, think of these things, you think those are plusses educationally that could come about as a result of consolidation, is that true, if you had to upgrade? A Yes. But let me point out that I think that plus would be more than offset by a lack of revenue to accomplish it.

Q If you don't get the money you don't get the plus, right? A Sure.

Q But as far as consolidation, per se, is concerned, you think these are definite educational plusses for the jurisdictions involved? A The improvement of the educational program is always a plus, yes.

Q All right, sir.

Let's talk about this law suit. What about desegregation? Is that an educational plus? A To my opinion, it is an educational plus.

Q Do you understand that this is a desegregation plan, that this is not a question of whether or not the Court should or has the authority to order consolidation of districts? This is not—you may be familiar with some of the equalization suits, this is [O-167] not that kind of law suit. A I cannot claim that expertise, no.

Q Do you know this is a desegregation plan, this is the issue here? A I am not sure that I have that distinction, no.

Q No one told you this was a desegregation case, that was the issue between the parties? A I am not sure that that was made clear. Obviously I knew that desegregation is an issue here, but just how, how you are describing it legally, I am not sure on that.

Q All right, sir.

Do you think that the integration of schools is an educational plus for children? A I think that generally speaking it is, but again you must take full factors into consideration. This is what I have attempted to do in making this recommendation.

Q Well, assuming you could get the money, do you think integration is an educational plus? Do you think that the general leveling up, I think is the term that educators generally use, of services, salaries, and so forth, do you think that that is a plus, a good, [O-168] educationally? A Well, I would have to say, yes, but let me simply say that on the basis of what I understand we are now talking at least in terms of Richmond, we are talking about an integrated school system.

Q What is your definition of integration, sir? Tell me when a school is integrated. A There is no magic formula, as far as I am concerned, as far as the percentage between the races would be concerned.

Q Well, if a school system is 70 percent white, its total pupil population? A I would consider that an integrated school system.

Q Let me finish the question.

70 percent white and the rest black. And the school is

80 percent or 70 percent black. Do you think that is a desegregated school when the other schools are 70 percent white or 90 percent white? A Again, I don't want to be put in the trap of having to defend a particular percentage.

I would say that if we are talking about what is educationally sound, I would not be able to answer your question until I had made a detailed [O-169] study, hopefully with a lot of help, because I don't feel that I would be qualified to look into all aspects of this as to just what the situation is.

I think simply because in a situation there is a school that is 80 percent black, that that is not necessarily educationally unsound.

Q If it is 80 percent black in a 70 percent white school community, do you think that is unsound? A Again, I wouldn't know until I had a lot more information.

Q Given that you have 70 percent of the students in the system are white and you have got schools that are 80 percent black or 70 percent black, do you think that those are segregated schools? Are they unsound educationally? A I don't know.

Q Well, let's reduce it down further.

That the example we used this morning, sir. You have got a school, 500 students. You have one black child in it. Is that a desegregated school, in your opinion? A No, I wouldn't consider that a desegregated school.

Q Well, if it has 30 percent black, is that [O-170] a desegregated school? A Well, you are determined that I play the number game, but it appears—

Q I am not trying to pin you down to a particular number, Doctor. I am trying to find out where it ceases being

a desegregated school. A Well, if you are determined to pin me down—

Q What sort of range would you use? What criteria? A I think that pressed, as I obviously am, that anything below the 20 percent point would conceivably be construed as a kind of token integration.

Q All right. That is 20 percent black.

Let's look at it the other way. A Or 20 percent white. I can't imply a difference without implying that one race would be inferior to the other, and I certainly wouldn't want to be in a position to even suggest that.

[O-171] * * *

By Mr. Little:

Q Dr. Whitlock, when you mentioned that Tennessee could furnish bad examples of everything, you weren't talking about expert witnesses, were you? A No, sir.

Q All right.

Doctor, in trying to evaluate your reasons as to why you are so strongly opposed to this particular consolidation, of these three political subdivisions, is it fair to say that one of your basic, very basic objections, is the lack of public support that you think would necessarily follow for this? Is that fair? It is not the only reason you gave, but isn't that one of your important ones? A I think all the reasons I gave are important, and that is one of them.

Q And that is one of them.

Now, Doctor, suppose, much to your surprise and everybody's surprise that the three school boards involved and the two Boards of Supervisors and the City Council involved here in Richmond, all wanted this consolidation,

and that the State Board of Education [O-172] wanted it, leave the State Board out. Let's say the localities wanted it, would that change your recommendation? A I think it would soften it some, but it wouldn't change it.

Q It would soften it, wouldn't it? A Yes, sir.

Q We are in a desegregation suit, Doctor. Your emphasis on public support gives rise to this question. Do you feel that a desegregation plan in Richmond alone or any other place that is extremely unpopular by the parents and the school children to the point where you have rallies opposing them and so forth, do you feel that that should delay or cause you to not implement a desegregation plan? A If it is the law of the land, then obviously it should not.

Q So you agree, then, that if the law requires it, you can't wait on public opinion to get behind it, is that right? A I would agree, although again, what the law requires isn't necessarily in my opinion, always what is the best educationally.

Q All right, sir.

[O-173] But you would certainly agree that an appropriate desegregation plan should not be not implemented just because of public opposition? A I am not in favor of boycotts and things of that sort that are going on now, no, sir.

Q Now, let's assume that first thing that the three boards wanted in this consolidation and the governing bodies wanted it, and let's assume further that you had, instead of the size systems that you have got here now, suppose each of the systems had 15,000 students so that the combined consolidated system would be 50,000. Would that make the consolidation more palatable to you? A Again,

it would soften or take some of the strength, I think, out of my reasons, but again I would have to recommend against it.

Q Right, sir.

Now, is it fair to say that you would still be against it because of the fact, basically, that you would have three separate taxing authorities, the lack of that financial base that you think is so important? A That's right. Plus the fact that you have given me in these three districts a total enrollment at [O-174] a point I think that the district begins to suffer some loss in economy and efficiency.

Q So you would be very reluctant, as I understand it, to recommend any merger for consolidation when the total enrollment would be 45,000, that is what I gave you? A With three separate governmental bodies involved, as far as providing the revenue.

Q No. Let's stick to size now. I really want to get to this size business where you start breaking down in encouraging consolidation. Let's assume that you have got one tax base. I don't care whether you have two or three political subdivisions, but one tax base, see. You have got the people wanting it, those two big assumptions, you still would have some— A You have oversimplified it. I would have to look at all the factors involved.

Q Would the facts— A I wouldn't want to do it on the basis of size alone.

Q No, sir. And you wouldn't, but it is 45,000 in and of itself isn't bad, is it? A No.

Q Doctor, you participated in all of these [O-175] surveys that you mentioned, and I think in 1970 you and

several other gentlemen did a survey for Raleigh and Wake County, North Carolina? A Yes, sir, we did.

Q Now, that was subject to a referendum of the people, right? A Right.

Q That is what the law required.

And it had the one tax base, didn't it? A It would have, yes. It did have, and one in consolidation.

Q How large was that system going to be? A 49,000 roughly, as I recall.

Q All right, sir.

Was that in a slow growing area or rapidly growing? A I think I would have to classify it as rapid.

Q Because, as a matter of fact, in your own study, it was projected that the combined population of Raleigh and Wake County by 1980 would approach half a million people? A I believe that's right. I don't recall the exact figures.

[O-176] Q So as far as size is concerned, you had no trouble recommending a consolidation that started out at 48 or 50,000, in that neighborhood? A I did not, when the other factors argued in our opinion so overwhelmingly were for consolidation.

Q I am just talking size now. You knew that was going to be a lot bigger in a very few years, didn't you? A That is true.

Q So size alone didn't bother you in that instance, did it? A It was one factor, obviously, and we considered many factors.

Q Right, sir.

Don't you think, Doctor, that a very important factor in any consolidation is the capability of the new district to deal with desegregation problems? A An important factor, yes. A factor important enough to overwhelm all the other factors involved that might be on the minus side, no.

Q Going back to the Raleigh—Wake County, you did participate in this study? A Yes, I did.

Q You didn't file any dissenting reports [O-177] from this, did you? A No, I analyzed the financial aspects and did show when we looked at the total picture, some financial advantage.

Q Right, sir. But I am reading from page 19. A All right.

Q Giving the reasons why merger was recommended. "Second, a single school system could make it easier to meet racial integration requirements in the schools. Virtually all school desegregation in both the City and the county systems has occurred in the predominantly white schools." Skipping over to page 20.

"New schools will be extremely important in providing integrated education to any substantial portion of the remaining 10,500 Negro students. The school planning within a single district and coordinated with general community planning could result in a superior capability for desegregating schools."

Now, you agreed with that as applied to Raleigh and Wake, didn't you? A Well, I filed no dissenting opinion, [O-178] although those are not my words. I did not write that section.

Q But you are on the front cover as one of the studies

that you said you participated in, isn't it? A That is true, and without a dissenting opinion, then obviously I endorsed it.

I would point out this was considered to be a plus factor.

I would point out also that in the Raleigh-Wake situation, some of the factors that caused us when we added them all together to make such a recommendation here, was two districts sharing in a county-wide tax levy on the basis of pupils, but yet differing markedly in ability in a city with vastly superior wealth able to level a supplemental levy that would keep them above the county in all aspects.

We found the city engaging in annexation and the county then locating school buildings so they would have less chance of being annexed rather than where the pupils were.

We found the capital outlay fund and bond issues being split between the county and the city again on a pupil basis and roughly equally because of the 26,000—23,000, but yet we found capital outlay needs in [O-179] the county at roughly 25 million and in the city I believe at about 13 million. For the county to get their 25 million, there had to be a 50 million dollar bond issue passed with roughly 12 million dollars going to the city that was needed that just simply encouraged inefficiency.

The point is we had to look at all of these factors.

Q And my point was that in that one one factor that was focused on was the ability and capability to desegregate schools, that is all? A With everything else on the plus side, this simply became another plus.

Q Right, sir. A And the importance of that as an element that varied from community to community, couldn't it? A It has to all be weighed in terms of the total picture and all factors analyzed.

Q Let's go back to the Raleigh—Wake County situation. There were some things in common between Raleigh and Wake County that perhaps exist between Richmond and Henrico County and Chesterfield County, don't you agree, some factors? A My memory is fuzzy on all of that report.

[O-180] Q Well, do you remember the emphasis placed in that survey on the fact that it was in essence mighty important that the education of a child in that area in no way be contingent on whether he lived in Raleigh or in Wake County, that they ought to get the same treatment? A Yes, we concluded that, and the same governmental taxing unit, yes.

Q Let me read you this from the foreword, sir.

"A survey team consisted of a group of nationally recognized specialists, each committed to the belief that educational opportunity for any given child consists of those experiences that are available for him for his own participation."

Now, this is the sentence, the next two. "Thus adequate opportunity for all children and youth means that it should not make too much difference where they live. In Raleigh and Wake County, it does make a difference. Too much of a difference, as the evidence showed."

So you were concerned in that survey about the differences between where a child lived, [O-181] whether in the City or outside, weren't you? A The person writing that, obviously was, yes, sir.

Q Yes, sir.

But you were a party to this.

I think you say that is the—you didn't really write those

words. Let's go to where you wrote. Didn't you write the section on finance? A That's right.

Q Sir? A Yes, sir.

Q I believe I am reading now from—let me show you this. I want to be sure.

[O-182] * * *

Q This is one of your conclusions, it is listed as conclusion number two. "Philosophically one could argue that school children of one district deserve the same educational opportunities as children of the other district. Educational opportunities for children and youth should not be dependent on where they happen to reside within Wake County. Wake County and Raleigh compromise a unified socio-economic cultural area. Many children and youth educated in the Wake County schools will eventually live and work in Raleigh. The concern of Raleigh citizens for the education of these county children and vice versa should be a very practical one." That is your language? A Yes, it is.

Q And over here on page 301, sir, again this is your paragraph, isn't it, on the next page? A I believe it is, if it is on the next page.

Q You were asked some questions about political boundary lines. Now, there are instances where you found that political boundary lines found no educational or afforded no educational basis? A In this case they were educational [O-183] detriments because of the arrangement.

Q Is this what you said about it, sir? "The existence of the boundary line between the county and the city school district presents a serious deterrent to sound school

facility planning." You found that in Raleigh? A I did.

Q You also found, "That the merger of the school districts would make possible the more efficient utilization of buildings, transportation, equipment, data processing, facilities, and both certificated and non-certificated staff personnel"? A In this case we did because of the arrangement they had engaged in in attempting to avoid certain things.

Again, each situation has to be looked at in terms of that situation.

Q That's right, sir.

Were there any other things in common that you recall in this survey of Wake County and Raleigh that might apply to Richmond? What about the normal growth pattern of Raleigh and Wake County versus Richmond and Henrico County? Can you draw any comparison between that? [O-184] A No, not from memory, I can't.

Q Well, I will just read from page ten. "The point to be made here is that the growth of Raleigh is following the pattern familiar to most urban areas in the nation. Rapid suburbanization and declining central city."

Do you think there is any analogy there? A I am not sure.

Q Then on page 18, sir, we find this language. You addressed yourself to the democratic—demographic shifts of population.

"Among all of the difficult problems internal challenges inherent in keeping with urbanization is the question of adjusting community institutions to changing patterns of demand for their functions. Here we are immediately concerned with the institution of public education. The basic

adjustment needed in public education for Raleigh—Wake County from a community standpoint is the consolidation of city and county schools in the one system. This conclusion rests on the judgment that a single school system would have greater capability for responding to the challenges or the urbanizing community.

"There are several reasons to support this [O-185] judgment. First, a single school system could deal more comprehensively with the present two marked populations and demographic shifts attending urbanization through unified administration and planning. Under the present division, there are instances of disharmony and conflict in school locations and jurisdictions."

Do you think that has any applicability to the Richmond —Henrico—Chesterfield situation? A Again, I can't be sure. I haven't made a demographic study here.

Q Well, you know pretty much about the demography of Richmond, that is substantially black, and the counties are substantially white, don't you? A I have heard that stated, yes.

Q Well, you believe that, don't you, Dr. Whitlock? A I have no reason not to believe it. I just haven't made a study of it.

Q Assuming that is true, do you think that this statement in this report on Raleigh—Wake County has any relevancy to Richmond? A I would have to say if it is true, possibly some, but again we have to look at all the factors.

Q That's right.

[O-186] Now, one thing in this Raleigh report, I think the finding was made that the laws of North Carolina left

a great deal to be desired. Do you recall that? A I don't recall your exact reference there.

Q But that notwithstanding, you still recommended merger? A We were obviously—we recommended merger, yes.

Q Now, there is another point that might have some comparison. On page 16 in discussing the demography of that area, the report states, "The most striking example, however, was in Raleigh, where about 85 percent of the city's Negroes lived in that portion of the inner city immediately south and east of the downtown area." Are you familiar with the housing patterns in Richmond at all? A Yes. I have traveled around here. I have some knowledge of it.

Q Do you think that might have some relevancy, that same reasoning might apply to the Richmond situation? A Possibly so.

Q On page 23, sir, another thing relied [O-187] upon, apparently, was that there was a community of interest between Raleigh and Wake County. Do you remember that? A I am not sure.

Q Let me read from page 23.

"Not unlike other residents of area characterized by geographical and political proximity, the citizens of Raleigh and Wake County face similar economic social and cultural conditions. Raleigh, the State of North Carolina government provides many cultural as well as economic opportunities for the citizens of both communities."

So you did get into community of interest down there. A Now, when you say, you let me remind you that I served as a member of an eight or nine-man team, not

making that study in that area, I had no basis for filing any kind of a minority report. I, obviously as a member of the team, in essence endorsed the report, but don't hold me responsible personally for those words.

Q No, sir. But you participated in the study, sir? A Yes, sir.

[O-188] Q Just like if I put my name on a brief, Doctor, sometimes somebody else might write it but I am stuck with it. A But I don't guarantee the accuracy of everything there if I haven't personally studied it. We would never get a survey report completed because each person would have to make the complete study himself, if that was the case.

Q Another little point of comparison that might have relevancy to Richmond, see if you think it does, sir. It pointed out that the county was more white in 1960. Let me see what it says. That Wake is today more white "than in 1940 or 50, that is a trend which is expected to continue through 1980 projections." Are you familiar with whether the counties might be more white or less white? A No, I am not.

Q Let's start talking about the financial aspect, here, sir, because we have tried to cover the size. Now, let's get down to finance.

In the Wake County study weren't you, as you previously testified you were, concerned down there because that was your baby, the finance end, wasn't it? [O-189] A That's right.

Q You were concerned by the fact that the wealth was in the city? A In the same governmental taxing unit, yes.

Q Right, sir. But I mean, that is where the majority wealth, the counties were— A It was in that case.

Q And you stated that they definitely ought to get together to spread that wealth out a little bit? A That was one of the considerations, yes.

Q Right, sir.

In fact, this is what you said, I think, sir, under your first criteria. "Sound principles of school finance theory dictate that school districts be formed to achieve some measure of financial equality so that pockets of wealth which are presently not being utilized to their fullest capacity would, as a part of a larger or different system, be taxed to increase the total supply of educational revenues available."

That is a sound basic principle, isn't it, sir? A I already stated that is one of my purposes in consolidation.

[O-190] Q Yes.

Doctor, let's follow up a little bit. Oh, by the way, in the Wake County study, one other reference in that study. You pointed out that the average bus route was less than 17 miles and this statement is found on page 255. "This distance can be covered in a reasonable time limit." You weren't too worried about a 17 mile bus ride, the survey was not? A The man who did that chapter was not, obviously.

Q Right, sir.

If you thought that that had a detrimental affect on the education of the children, don't you think some mention would have been made of that? A I think so.

Q Now, Doctor, let's come back to the second big objection that you have got to this plan. That is, the financial

plan of operation, the fact that you have got three separate tax levying authorities in one school system.

Have you read, I feel confident you have, the sections of our code which comprise or set forth, purport to set forth the way that a school division consisting of more than two or more political subdivisions [O-191] are to be financed? A I think I am. I couldn't quote them verbatim.

Q Well, now, Doctor, the fact that our legislature by enacting a series of laws providing for the handling of the details of the running of a school system consisting of more than one political subdivision, do you take basic issue with their attempt to even do that because there are more than one political subdivisions involved, more than one tax levying base? A There may be some advantages that would outweigh some of that, but as a basic principle, yes.

Q So your complaint, I take it, is with the whole premise of these laws that the legislature shouldn't have passed any laws like this?

* * *

The Witness: I wouldn't want to go so far not knowing all the reasoning behind it. I am saying [O-192] it, as a general principle I would find some question to it.

By Mr. Little:

Q Let's run through what the legislature of Virginia has established as a basic outline for the operation of school divisions consisting of more than one political subdivision. Would you do that with me? A Yes, sir.

Q There is one section, 22-100.1 that now says that whenever a school division consists of more than one political subdivision you have to have one central school board. It used to be that you didn't have to have one.

Now, from an educational standpoint, do you disagree with the soundness of that or do you think it has advantages or disadvantages? A That certainly, in my opinion, is an improvement over multiple.

Q All right, sir.

Then it says that a Board in such a consolidated division, it tells how the Board is selected. It is on a population basis based upon the respective number of people in each political subdivision. Do you think that is a fair way to select a Board for [O-193] such a division? A I think so if they are forced to run on some at-large basis. I wouldn't want a Board member feeling he owed his allegiance only to a small segment of the community when he should serve all of them. But as a basic principle, yes.

Q Then it sets up staggered terms for the Board members and sets their pay and so forth, isn't that a good thing? A I would advocate staggered terms. So you would always have a majority of the Board experienced, yes.

Q Right, sir.

Then it provides for the transfer of all title to all real estate from however many political subdivisions might be in the Board to this central Board. Is there anything about that that bothers you? A No. If it must be this arrangement, I would assume that is all right.

Q Then it gets into this, sir, as far as the financial plan of operation of schools is concerned. Again I am just asking you to valuate it as an educator. It says the financial plan of operation of the schools, including submission of budgets and reports, shall be [O-194] governed by rules and regulations promulgated by the State Board of Education. Do you think it is wise to have the State Board involved in this

phase of it? A Well, I would certainly say that the districts will need some expert guidelines in this and I know of no better agency than the State Board to do that.

Q All right.

Now, it gets down to expenditures for capital outlay purposes and incurring indebtedness for construction of buildings and says that notwithstanding so-and-so, the local operating costs as well as the expenditure for capital outlay purposes and incurring indebtedness for the construction of school buildings shall be on a pro rata basis on enrollment of pupils, pro rata basis on enrollment of pupils, [*sic*] or such other basis as may be mutually agreed upon by the division or School Board with the approval of the governing bodies of the participating counties and/or cities.

Now, does the per pupil concept bother you from an educational standpoint? A Yes, it bothers me if there are differences in ability to pay as measured on a per pupil basis. I don't think it is fair to tax one citizen or make one [O-195] citizen make a greater effort to get the same benefits from this unified school district than another citizen would have to simply because he lives in a subdivision, a fiscal area with greater wealth.

Q Didn't the Raleigh—Wake County survey point out the fact that the educational needs in one political subdivision might be greater than that in the other? In other words, the county needed more money and it was better to tap the stronger resources of the city? In other words, wasn't that the principle? A Yes, but to be absolutely sure of being fair, I think a much better arrangement would be a single taxing unit rather than—

Q Right, sir. Let's concede that that is your view, that that is a better thing, but there is nothing grossly bad about

this, is it? A This policy does not guarantee—this could well be that the district would be—well, it doesn't necessarily follow that that kind of arrangement would be fair. You would have to know how the wealth is distributed and how the needs are distributed.

Q But you would rather see the legislature come in and provide it for a uniform tax base? A Yes.

[O-196] Q All right, sir.

But you are aware of the fact that in Virginia no school board has the power to levy taxes? A I am aware.

Q Actually, you would prefer to see all school boards in Virginia be independent, wouldn't you, and have the ability to levy taxes? A I would endorse that, yes.

Q Now, Doctor, do you consider yourself having some expertise on desegregation? A No, sir, I do not.

Q You don't? A No, I do not.

Q Well, didn't you direct a seminar just recently in June, let me read this, from the Peabody News, Volume III, Number 3, Summer of '71, where it said, "60 public school superintendents and key personnel attended a study conference on the unitary school system on June 28 and 29 at Peabody."

And the last sentence says, "The conference was under the direction of Dr. James W. Whitlock." A A person can arrange the details for a conference. I could have had a conference on nuclear energy and under the circumstances in which we held this [O-197] conference, I could have fulfilled my role there very effectively.

Q Both are very explosive materials, aren't they, Doctor? A I would simply point out that this conference

was a means of getting together some, as it says, 60 school superintendents and their staff from school districts all over the south to come in and spend some three days together where they exchanged ideas as to how they could best achieve educationally sound unitary school systems. I contend that I did not have to be an expert in desegregation.

Q Well, fine.

Then you don't consider yourself as having expertise in the field of desegregation? A No, I don't.

[O-200] * * *

WILLIAM P. McLURE

was called as a witness and, having been first duly sworn, was examined and testified upon his oath as follows:

Direct Examination

By Mr. Rogers:

Q Dr. McLure, will you please state your name and address? A I am William McLure at the University of Illinois.

Q What is your educational background, Doctor? A Well, I am presently a professor of education administration and supervision. I am director of the Bureau of Education and Research in the College of Education. I have held this position 20 years. Prior to that I was on the staff as associate professor for three years. Prior to that a couple of years on the staff of the University of Mississippi, where I was director of the Bureau of Education Research and Associate professor.

[O-201] * * *

Mr. Rogers: I offer him as an expert in the field of educational administration, organization, and school finance.

Mr. Lucas: No objection, Your Honor.

The Court: All right.

Unless I hear of anybody that wishes to examine him on it, why he is qualified.

By Mr. Rogers:

Q Doctor, have you been employed by the defendants, the State Board of Education and the two counties, Henrico and Chesterfield, to study and review the proposed merger of the three school systems of Richmond, Henrico and Chesterfield? A Yes, I have, Mr. Rogers.

Q Doctor, first let me ask, what do you consider to be the goals of American public education? A Well, I would like to express those in about three major components.

First, I would put number one the fullest possible development of every child commensurate with his ability and with his motivation.

[O-202] Now, this is a concept which involves his development intellectually, his health, his talents and skills for occupational work later, his social development in terms of becoming a responsible homemaker, civic responsibility as a citizen, sensitivity and respect in relating to others, ethical and moral development, the affected quality such as creativity, initiative, and self-purpose, self-direction, inner security as an individual.

The second would be with reference to the purpose that

we have of perpetrating and improving the best values in our society. This we often term as a social purpose.

Now, these two things are interrelated.

We can't think of ourselves as individuals without thinking of ourselves as members of a society. So this is important to keep in mind.

Then the third thing that I would like to add, so that I don't think of education as solely for children and youth, but education of a continuing nature for adults because education should continue on through adult life for occupational retraining, for in other forms of learning that adults can profit from and really increase the fullness of living.

[O-203] Q Doctor, in the course of your experience have you been involved in studies dealing with the consolidation of school systems or school districts? A Yes. I was involved in some eight or ten or maybe 12 local school systems, some 20 to 15 years ago. I would say in the last 15 years my work has been directed more toward state-wide studies of a system and looking at the parallel, and I might say coordinate problem of organization in patterning school districts structure within states rather than looking specifically at or surveying individual districts.

Now, in these studies, I say of statewide character I have been involved in, I have a list here, I think of about a dozen states and about three or four of them I have repeated some of the studies that went back over a period of time. So there have been some 12 to 15 comprehensive statewide studies on which I would either, I say, conduct myself as director of and some four or five or six of which I was a member of a staff.

Q What has been your most recent study? A Well,

within the last five or six years I would like to mention about three that I think are most pertinent here.

[O-204] One was a study of the schools in Illinois where I tried to relate finance to organization to some educational characteristics or programs that come about as close to educational outcomes as we can get. Where my main concern was cost analysis. I would like to mention that study.

The second one was the one that really, following that, that somewhat was triggered, it triggered, was another study in the same state called Initiative by former Governor Otto Kerner who requested that I direct it, and which I did for about two years.

Then the third one was a special study in connection with a national educational finance study, of which I am one of six professors asked by the U. S. office to conduct that. We were just concluding a three-year study and within that framework a special study which I conducted, one of about a dozen on early childhood and basic elementary and secondary education.

Q What is the Research Council of the Great Cities for School Improvement, Doctor? A Well, this is a council that was organized about 1962 or late '61, somewhere along there, by about 14 of the great cities, they call themselves, with the largest population, I guess, to collaborate to study [O-205] some of their common problems.

I was working with them as consultant at the time on some special studies and fiscal policies and vocational education and some other aspects. It was at that time that the council was organized.

Q In connection with your duties as a consultant, you of course became familiar with problems with the school

systems of larger cities, then, is that a fair statement? A I think I did to a considerable extent.

Q Then in making your study of the proposal that is here under consideration, have you been furnished with information regarding the three school systems, and if so, describe generally what that has been, Doctor. A Yes, I have been provided with information on financial budgets, pupil distribution of schools, maps, charts, various statistics and reports to the State Department of Education, and other such data.

Q Have you visited any of the schools in the area? A Yes, I have.

Q Of each system? A Yes.

Q In considering any proposal for the [O-206] consolidation of school districts, Doctor, what factors do you consider? A Well, I would start with consideration of educational purposes. These are important.

I would think about the school environment of the pupils because that is what the school provides. The educational program. I would consider the gains and losses and program arrangements.

I would consider the flexibility to organize schools and programs.

I would consider the administrative organization and the associated part of providing services to teachers, financial arrangements.

And I think finally, there may be others, but among the major ones I would say that I would consider the school and community relations.

Q Would you consider the relationship to the parents to the schools? A Yes, I think this is what I meant

really by school community relations. Of course, there are various groups in communities and the parents, of course, consist of a very special group, but there are other community agencies which I don't mean to overlook that [O-207] also relate to the system.

So I would say that we have, we would have what I call a multi-group society that relates to the schools, even the church groups, civic groups, and just citizens, unorganized citizens, if you will, that can relate directly.

Q In proposing any consolidation or in recommending it, what objectives are generally sought to be attained? A Well, generally, as you have heard the testimony thus far, and I agree, and also in my own experience and my knowledge of other studies that have been made, I will answer that by saying that the reorganization has generally been focusing on small districts, smaller than we are concerned with here in this case.

They are either concerned with consolidating small ones to larger ones or a combination of small ones.

So one of the objectives is to obtain as—a size as economical as possible. But you will note in many of the studies that the recommendations that are made are usually compromises with circumstances. I myself have recommended in state-wide patterns of [O-208] consolidation when you look at sparse areas you cannot reach school population size that would meet optimum standards simply because of the amount of geography involved, and so you compromise with these various circumstances.

Q What do you consider to be the optimum size to afford a broad range? A Well, I have said 20,000 plus or minus. I don't know what the exact number is, but I would say certainly 20 to 30,000 is an optimum range of students from counting kindergarten through grades 12.

Q Can you obtain a broad educational program in a school system of that size? A Yes. I think that size is one that you will find that with few exceptions the incidence of need, of pupil need, can be met, instructional groups that are feasible and at economical cost.

Now, you have heard mentioned here in the case on record some of the special programs that are even operated here, cooperatively. They mentioned computer facilities, specialized vocational education and the upper grade level, or even some special instruction for some highly deviate needs of children like children with special physical difficulties.

[O-209] The incidence might be of such character that the population I have cited would not meet the most economical needs for those special purposes.

There are some others, undoubtedly, that will appear in the future, but I can say that there are other arrangements for providing these things on a cooperative basis.

Now, I didn't fully answer your question on listing other things for consolidation. I will proceed, if you don't want to pursue the size factor.

Q Please do. A Well, aside from the optimum size, and I can elaborate on that later if you wish, I would say the second objective would be to obtain broader educational programs. I suspect that in some of the districts that have been mentioned here in Court if you were to look at the high school offerings in those little districts that were proposed for consolidation, you would find maybe for a four-year experience for a child you would have available for him not more than 35 or 40 course credits, units, looking at the breadth of the program in that way. But in the larger high school, after consolidation, it might be increased

to 60 or 70. And in the high schools that I would say of optimum size today, [O-210] which would be around 1,500 to 2,000 pupils for a school, why you can get up to a hundred course credit units with that kind and you can see the breadth of opportunity available there. So that is certainly one of the very big considerations.

Number three, to provide this breadth and quality of supportive services that we need for teaching today is another important consideration. Education is becoming as complex as modern hospital clinics where we have a differentiation of staff and function. We have people doing classroom teaching. We have teachers doing special teaching within classrooms, we have backup people working with teachers, and I note here in these three districts that they are now ranging about, I have the figures I can give you in a minute, but something like 62 percent of teachers are backup people and I have found in my research in a number of instances and throughout the country, as a matter of fact, that I would assert that I believe that we are moving into a period in which we have to think in terms of 15 to 20 percent supportive staff, full-time equivalents in relation to teachers. This is certainly a very important consideration in consolidation.

All right.

[O-211] Number four, this, I suppose, is part of what I was saying there to get the best utilization of the talent of people, that is an associated factor.

Now, the other point that I can think of is a major one is to have sufficient flexible organized schools in various ways by grade level and in other ways in which we can provide that. In the upper grades, in high schools, particularly, if you had only one high school in the district, as we do in many parts of the country, you might not be able

to provide as much as you could in a larger district where you had two or three high schools. You could provide certain special things in one center for all three.

Well, I will stop there. I think those are the major things, Mr. Rogers.

Q Well, considering the size of the school systems in Chesterfield and Henrico and Richmond, taking them separately, are they of sufficient size to obtain the objectives that you state should be sought by consolidation? A I certainly think so. I certainly do.

Q Now, in studying the proposal to bring the three school systems together, totaling over 100,000 students and considering the separate jurisdictions here [O-212] in Virginia, do you find any educational advantages to the proposed merger of the three school systems? A No, I can't say that I do.

Q Do you find any educational disadvantages to the proposed merger? A Yes. I would like to list these very briefly. I have about eight or so.

What appear to me as the disadvantages.

Number one, it seems to me that this plan is too mechanized and too rigid. I think mechanical is the best word I would like to use. It simply, as far as I can see in this connection, reshuffles pupils and resources. I don't see in the plan either any explicit or implicit characteristic of making best use or of obtaining more resources or obtaining better results that might obtain better results.

Number two, this proposal seems to me creates some new problems. I would say some very formidable ones in the governance of schools, supervision, and administration. It centralizes administration. Parents will have less access to top administrative staff members because of the in-

creased numbers of schools and the layers of administrative groups to go through. Communications will be made more complicated.

[O-213] These are some of the problems that the cities and other districts now have with more than 100,000 pupils. I take that figure roughly. They are trying to cope with this. As I tried to get inside and see the real problems of these big city school systems these matters are at the heart of their difficulties.

We can't decentralize effectively. This is the problem.

This merger, to me, is creating something which the others have by other circumstances and would like to work downward in a decentralized fashion and never reach. They never reach a point at which the decentralized units can operate effectively as if the same size units had the autonomy your present districts now possess.

Number three, I think the proposed merger obliterates the type of school community that provides the basis for an open self-governing society where individual conduct on the part of the pupils is subject to the discipline of one's peers and to the interests of an identifiable adult world.

Q Is that particularly true at the elementary level, Doctor? [O-214] A It is especially true there at the elementary school level, you are right, with younger children, even more so with the very young. But it is still true when you think of the high school level where even though they become more cosmopolitan and drawn from a larger area and all this, where they still have an identification with this larger community, if you will. So we have in the system a community within a larger system or wide community, and when that gets beyond some limits, and these I think are reasonably at the level of the present district,

something begins to happen that I think is—we will have to consider very carefully. I get this from empirical evidence of what is happening among or with the districts that are already of the size I referred to, alluded to.

Number four—now, that three one is very important. I worded that very purposefully because in our society we, as youth grow up in the early formative years, this concept of self-discipline and self-direction where people learn to respect and children learn to respect each other and to behave and to obtain the approbation as well as sanctions of the discipline for what they do is very important to children.

Paragraph four, I think it contributes [O-215] to a kind of a non-community mass society where parents will find themselves participating less effectively and whereas has been pointed out earlier, the school tends to be governed by sort of the experts and the parents have less and less access to them and where the parents at least have a determining force in not only responding to, but helping create the nature of schools that society provides.

Five, I believe this merger might take us one long step toward a large centralized school system in which its purpose, its program and its disciplines are imposed extraneously and where the internal—external—imposed externally rather than being of a size where much of this has done, as I have said here, is an internally generated thing.

Paragraph six, it unnecessarily complicates and adds extra costs to the financing of schools.

Q Do you think the proposed merger system would have difficulty securing adequate financial support having to look to three separate governing bodies for tax levying authority? A I think this would be an expectation. I think this is what you would expect but even, I would say

this, Mr. Rogers, that if Virginia were to radically [O-216] change its financing system and place less dependence on the local district or division than it does, if it moved all the way to Hawaii, the only state that has a complete state system, that is Hawaii, and abolish all local districts entirely, and of course you will hear some proposition advanced that maybe that is in the future, but you see what I am doing in answering your question, if we went to that extreme, I still think the problems would be complicated. We would be moving very far in the direction of a centralized system, centralized as Australia where they are trying to move backward very rapidly and having tremendous difficulties. We don't know yet. Hawaii's situation has not been proved by any sense of good reason.

So I would still hold to that statement, Mr. Rogers, even if the present financing were modified.

I have two more points, if I might mention, if I am not prolonging this.

I would say too, one thing that impresses me, that it creates a mathematical racial mix, which is arbitrary, dehumanizing, and unpromising for a constructive and wholesome integration in a multi-racial society.

And eight, I am concerned about the additional mobility that will be created for the pupils.

[O-217] Now, we have perhaps as many students, as many social sciences would indicate in the findings of studies, that some of the effects of the mobility that we have now by the forces that are generated in our society perhaps are creating many problems that we haven't yet learned how to cope with adequately, and new ones are being added. It seems to me that this adds even an additional one.

Q Doctor, is it your opinion that the three separate systems operated separately can provide a high quality of education, that is, Richmond, Chesterfield, and Henrico, to the pupils served by the three systems? A Yes, I think they can. I think they meet what I would call the basic criteria of a school system with a high quality education.

Let me run through these quickly here. I have number one, I have already said, they have an optimal size of pupil population of all of the advantages accruing there.

Two, the incidence of need of these special programs of some half dozen or so that are in operation today can be operated effectively and efficiently with a few exceptions we have noted.

I would say that there is a multiplicity [O-218] of factors that exist which in combination I think can provide good education.

They have flexibility, too, I think, adapt to changes.

Now, this point has been made earlier, and I think it is an extremely important one. The capacity of a school system to adapt to changes, to slough off the old, that is one of the big problems, slough off old practices that need changing, and very often these cost money, like recapitalizing some of the old facilities that are outdated and need replacing.

And they can provide the staff differentiation, differential talents and functions; they can provide auxilliary services economically. The parts of the budget that have to be procured through purchases and bids and so forth can be obtained as economically as they can otherwise.

I have had people cite these matters of economies, but I would assert that these systems are large enough to accommodate those needs.

Physical facilities can be utilized fully, school buildings and equipment, what have you.

Q What do you think would be the most promising changes to improve the quality of education [O-219] to the greatest extent possible in each of these several divisions? A Well, in my present knowledge, from what I have seen, I would say number one, I would extend the educational program downward to, and I think this is something in the future, I think it is coming, that you could look forward to the time of extending within a feasible methods and times, education downward to about three years of age. I call this early childhood education.

You could call it nursery school if you wish, for three and four-year-olds, kindergarten for the five-year-olds. Predominantly that is one area of improvement that I think is in the future for all districts.

I would say secondly one specific improvement that I think will pay big dividends for the amount of money invested, that is organized parent programs. I recently found evidence throughout this country that for its children with learning difficulties where experimental programs are under way giving parents instruction in what to do with and for their children at home, even before they enter school. Then after they enter school collaboration with the school in paying big dividends [O-220] in terms of development of children.

Then number three, I would say that there is improvement to be made in and a considerable amount of recapitalization of physical facilities.

Among the factors in some 30 very innovative schools of which I have reported already in writing, recent study and under which I have considerable amount of other data on and haven't yet analyzed it fully, completely, one of the

biggest factors was to provide physical facilities that are designed for the educational purposes and programs.

If you are going to manufacture soap, you want the kind of physical facilities and equipment to produce the best soap possible. This is no less true in education.

This is one of our big problems. There are teachers who are performing at less than their ability simply because they are working with spades instead of other modern tools of which they can perform more effectively.

Number three, I think that we could examine, and I am suggesting this as a general approach which I think will apply here as well as other places, too, as to focus attention of improvement on an entire [O-221] school as a smallest module of change. The day of trying to improve the science field or the math or the history or some other part of the curriculum is gone. We have to think in terms of developing a total school and everything that goes into it as a unit. When this is done on a school-by-school basis as fast as a system can operate, why, then I think here is one of the things I would suggest.

This is some expansion of special programs and vocational, technical work, field work.

I just pick these because, as I look over the enrollments in these special fields, I think there is a very good possibility that these systems are not too different from some 28 or 30 systems I have studied recently wherein every one of these fields the school people when they inventoried their needs found that they were not meeting all of them despite the fact that they were doing good jobs.

Q Well, Doctor, do the type of changes that you suggest to further increase the educational opportunity of the children in these areas, could they be accomplished under

the systems as presently constituted? A Yes, I think so, if they can be accomplished at all.

[O-222] You know we don't, high quality education is a general term. I think the best we know of any school or school system is what we might characterize as something that is becoming and not having arrived.

So I would say that whatever these systems might find in need of improvement I think they can accomplish it as well as, as far as I can see, they might do otherwise.

Q In your opinion, could such changes be accomplished if the three systems were merged into one? A No, I don't think so. I think, as I said earlier, there is too much risk that large numbers of children, particularly young ones, will be severely disoriented, that uniformity will become a substitute for quality, and then diversity.

Q Doctor, how important do you consider public support of public education? A Well, I think public support is vital.

The Court: I am sorry.

The Witness: Vital.

The Court: Vital?

The Witness: Yes, sir.

I think it is a vital factor in shaping the nature and quality of education.

[O-223] Now, a hundred million Americans can be wrong, to use a cliche, at a given moment, perhaps, but I think over the long run they will not be wrong.

I think that you may find that as we work with citizens and have ideas as educators, have ideas tested, various propositions, we experiment and explore, we do sell experi-

mentally on the principle of parsimony in which we try to be sure that we do the least harm if the experiment doesn't succeed.

Schools are constantly exploring to find some improvement.

Now, this takes an interaction with the public and the school. It is not a one-way street. So I think this is why I say it is vital.

So the public is both a consumer and beneficiary.

It is a beneficiary, apparently, because his child is being benefited. The public is a beneficiary in general because of having the children educated for their neighbors and so on. I mean, these two things are inseparable.

Next to defense, education is the largest governmental service in this county.

I would say the expression of public [O-224] interest and demand when it gets expressed in the form of demand, in many forms of demand, the support of education from the public is one of the most fundamental factors to perpetuate our society. That is my judgement about it.

By Mr. Rogers:

Q If in your opinion, do you think the City of Richmond, Chesterfield and Henrico, with the schools as proposed, would receive public support that you have described as so vital? A I don't think so.

As I looked at the literature in my field where I devote most of my attention, as I look back thinking of 40 years or more, there has always been a concern reflected in the literature of the isolation of the citizens in the large school systems. This has recurred throughout the literature. The isolation, the impediments that citizens have of getting their

views expressed and participating, participating in setting objectives, evaluating results, maintaining communications, understanding what is going on, that is a vital factor. Then finally, when they are called upon to give financial support, they have to make a rational decision.

[O-225] Q Doctor, if there were no question of race at all in this matter, if the City of Richmond and the counties of Henrico were all of the same race, both the population and the student body, do you think you would get the public support for the operation of schools as proposed by this merger if they were merged, eliminating the racial factor? A No, I don't think so. I don't think so.

I think you would find the same basic problems even if you had only one race, leaving race out, as you say.

Q Doctor, have you been in the Courtroom throughout a good part of this trial? A Yes. I have heard most of the testimony. I guess I missed some four or five days, I presume.

Q Have you heard anything that would alter the views that you have expressed here on the stand? A No.

DISTRICT COURT PROCEEDINGS OF SEPTEMBER 9, 1971

[P-4] * * *

PROCEEDINGS

(September 9, 1971) (Thursday at 10 o'clock)

The Clerk: Civil Action 3353-R, Carolyn Bradley, et al., versus the School Board of the City of Richmond, Virginia, et al.

Case continued from yesterday.

The Court: Good morning, gentlemen.

All right, Dr. McLure, if you would come back, please, sir.

(Dr. McLure resumed the stand and testified further on his oath as follows:)

* * *

Cross Examination

By Mr. Lucas:

[P-7] * * *

Q Have you seen what was filed with the Court indicating certain materials that you would rely on or that you would have reference to in your testimony? A Yes. I have seen the list.

Q And the article of the Role of Major Metropolitan Centers in State and Local Finance from the American Economic Review was one of those items that you indicated?

May I approach the witness?

The Court: Yes.

By Mr. Lucas:

Q Number 19, sir, is that one of those listed? A Oh, yes. I have read that.

Q And who is the author of that? A Harry Frazier, I believe, was the principal author.

Q At the University of Michigan? A I believe he is at the present time. I am not sure.

Q Do you agree in substance with that article, [P-8] sir? A I don't recall all the details of the summary. I couldn't say that I agree in every detail.

Q In general you relied on that as part of the references for your testimony here? A That was a reference in which he dealt with some of the crucial problems is the reason it was submitted.

Q All right, sir. Let me read to you from that article at page 306. "That population in the major metropolitan centers is likely to continue to increase seems probable on at least two counts. The first of these is the fact that suburban communities notoriously resist invasion by nonwhites and certainly few or none zone for low-income families. The central city, consequently, is the residual heir to such groups and will be likely to continue to absorb them in numbers that will insure population growth."

And then at Roman numeral II, the second paragraph, "The per capita expenditures of the major metropolitan center may be expected to increase as a consequence of the fact that the generation of demand for public services in such centers is, in important degree, a function of the number of persons living in the surrounding metropolitan area. While it is hazardous [P-9] to venture prognoses on the basis of cross-section analysis for any one year, my own statistical analysis and that conducted earlier by Professor Hawley confirmed the hypothesis that the per capita outlays of the central city are associated with the size of the

population resident in the metropolitan area outside of the central city. Persons living in suburban communities who work, play, or shop in the central city add to the need for street and parking facilities and traffic control and add as well to the demands upon the city's facilities in such areas as police and fire protection, recreation, and sanitation. Population size of the central city itself, on the other hand, does not appear to influence the level of per capita expenditures. Given the certainty, therefore, in the absence of substantial annexations, that the ratios of metropolitan area population to core city population will continue to increase rapidly, it follows that the expenditure requirements of the core cities or major metropolitan centers will increase substantially more rapidly than would be indicated by increases in their own populations and rising levels or standards of public service."

Do you recall that discussion in the articles? [P-10] A Yes, I recall it.

[P-12] * * *

Q Should the schools take a leading role, sir, in changing this pattern of segregation in our society? Is [P-13] this a proper function of schools? A I think the segregation issue has been settled. I think the schools have played a role in teaching basic understandings about the nature of segregation. To that extent the schools have played a role.

Q Schools have played a role in teaching segregation, have they not? When they are set up as separate schools and operated as separate schools as late as 1970 in some of the areas involved in this suit, that is a teaching role when you operate schools as segregated schools? A I am not aware of that practice.

Q If you operate a school as a segregated school is this not a teaching function? Don't you teach something about operating schools in a particular manner? A Well, I am not aware that segregated schools have been operated.

Q Anywhere? Would you like to restrict your answer just a little bit, Doctor? What about in Virginia? Are you aware that segregated schools were operated in Virginia? A I am aware that they were at one period in history.

[P-14] Q How far back do you think it goes when they ceased operating segregated schools in Virginia? A I can't pinpoint the date. I am aware—

[P-29] * * *

Q You listed that as one of the objectives to be obtained by consolidation of school districts, to have sufficient flexibility to organize schools for optimum educational climate for children, and I have only mentioned one ingredient. If schools are located, sir, in reasonable proximity to each other, a mile or mile and a half apart, and the children, some children live closer to one school than they do to the other, but they are separated by some political boundary, have you optimized the educational climate for the child if he has to travel a longer distance to get to one school when he happens to reside in a different [P-30] political subdivision when he might be able to just go a block or so to a school, although in a different political subdivision? A Well, that, I think, would depend on the reasonableness of distance here, that he had to travel, for one thing. I don't see how in urban areas you can draw lines without having somebody on one side of a street belonging in one school system and those on the other side

elonging in another school system and in which some of ese distances might be a little different. This is inevitable.

Q If some of the schools, as a result of this drawing e boundary line, are on one side almost 100 percent hite and schools on the other side of the line, a mile or , two miles apart are 70 or 80, almost 100 percent black, es this optimize the educational climate for the children ing in that area in terms of the other things you have id here today, sir? A Well, I think I couldn't answer at. I would have to say no to that. I would have to say at there are other factors that might optimize the educa- nal advantage of these children regardless of their par- cular composition that you referred to.

Q You think they can have an optimum condition 2-31] if you keep them racially separate? A In a school stem or a school?

Q In schools two miles apart, sir. A Well, I don't ink what we are talking about here, for a school system, the same thing for a school.

Q Let's just talk about these two schools. Do you think u can optimize the educational climate for the children you keep two racially separate schools that close to- ther? A Well, when you have two school systems op- ating those two schools.

Q Two different systems operating, they are divided by is boundary. A Well, in my opinion the optimization at can be achieved for those two schools is that which can done by the respective school systems.

2-58] * * *

Q You said that what was wrong with this plan, the sadvantage, if you will, is it creates a mathematical racial

mix which is arbitrary, dehumanizing, and unpromising for a "constructive and wholesome integration in a multi-racial society." My question is how are you going to get the constructive and wholesome integration in a multi-racial society in a fact situation such as we have here today? A Well, first, as I see it this plan creates an arbitrary racial distribution.

Q What is arbitrary about it? A Well, as I understand the plan approximately 70-30 percent in the whole region as proposed—

Q That is what the region population is though, isn't it? A Yes, as now.

Q Is that arbitrary or is that just a fact? A Well, that is a fact, but then the plan is to make that apply, that ratio apply for a racial mix throughout every school as nearly as possible in the region.

Q The 30 percent? [P-59] A 70-30 in every school. Am I not right?

Q No, sir, you are not. That is not what the plan says. It says keep a range in the schools between 20 and 40 and the suggested plan of the Richmond Board, which is merely an illustration of one way it might be done, actually goes below 20 in such areas as region six. A Yes, I am aware of that.

Q In Chesterfield County. It goes slightly above 40 in some other areas. So it is no fixed number. It is a range. What is arbitrary about that? A Well, just using your words, you fix the range. You don't leave a natural development of a distribution of population.

Q Do you think the distribution population in the area

of Richmond, Chesterfield, and Henrico is a natural distribution? A Yes, I would say it is.

Q You don't think segregation in schools and housing and employment had anything to do with it? A I don't know to what extent those had to do with it.

Q So you don't know whether it is natural or not, do you? A Well, I am taking the facts of the existence [P-60] of the housing patterns of the composition within each system as they are given.

Q You are assuming black people just like to live together, is that what your assumption is is a natural distribution? A Well, I presume that—I would assume that many do.

[P-62] * * *

Q Do you think arbitrariness is bad in any form? A I think from an educational point of view to set an arbitrary limit, racially, this, from my point of view, is calling attention to the fact that you have a group that you want to distribute for some reason. I don't know what the reasons are, but there certainly must be some. I don't think that that is good.

Q Do you think an arbitrary boundary which has [P-63] the effect of separating children in exactly the same way is bad, sir? A When you say arbitrary boundary—

Q I mean political. A The school district division boundaries?

Q Right. Is anything sacred about the boundary? A Not in all cases. Not in every instance. I wouldn't say they are.

Q Is there any particular reason why the boundary of the Henrico school system should be this jagged line like this? Would it be just as logical if it was straightened out? A Well, I don't know the circumstances. I don't know the reason why those lines came to be as they are, so I couldn't answer that.

Q Educationally is there any reason why this line should zig and zag in this fashion? A No. Nor is there any reason to change it, as far as I know, of the facts you have given me.

Q Well, it is an arbitrary barrier between black and white schools, is it not? A I don't know that it is.

Q There are black schools on one side of the [P-64] line and white schools on the other, are there not? A I am not acquainted with that, with the boundaries you refer to. I am afraid to answer you.

Q If there are black and white schools on either side of the line separation is an artificial one, isn't it? A Not necessarily. You are talking about a boundary between two school divisions.

Q Right jagged lines around the City of Richmond which, from the map, appear to coincide quite sharply with racial concentrations? A Well, they wouldn't be necessarily. These lines might be, as far as I know, there might be some barriers there that would make it unreasonable for children to cross, or the distances there don't appear to be too great to go from one point down some direction, so I can't say from the evidence there that this would be any disadvantage.

Q You can't say that there are any advantages to maintaining that boundary either, because you simply don't

now anything about them, do you? A Well, you have hree constituted divisions, school divisions.

Q I understand that, but there is nothing about [P-65] he boundary themselves, why either, or particularly one better educationally? A You see a boundary has to efine a division. What I am ..ying to answer you is that o matter if you are going to try to define a school division nd give it a jurisdiction responsibility, a boundary has o be drawn somewhere.

Q I agree with you, sir. The only question I am saying , is there any particular reason why the boundary has to e that particular spot, educationally, as far as you know? No, I would say I don't think there is any reason.

Q Doctor, you talked about the necessity of public support for schools. Are you aware that the same predictions f the loss of public support were made in Richmond, were ade in Little Rock, were made in every place that school esegregation first started with a single Negro child that re being made with reference to this desegregation plan? lasn't it been the same kind of prophecy of doom? A I m not aware of that kind of prophecy.

Q You have been in public education all these years nd you are not at all familiar with the fact that there were ll sorts of outcries of ruination of public [P-66] schools nd how people wouldn't support them if you integrated hem? You are not familiar with any of that? A Well, am aware of much of the confusion and conflict that we ave had in the last decade, yes. I am aware of some adstments that have been made. I am somewhat aware of hese problems, I think.

District Court Proceedings of September 9, 1971

[P-85] * * *

CLIFFORD P. HOOKER

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Gravatt:

[P-86] Q State your name, residence and occupation, please, sir. A My name is Clifford P. Hooker. I am Chairman and Professor, Division of Educational Administration, University of Minnesota.

Q Dr. Hooker, what experience have you had in the reorganization of school systems?

The Court: Excuse me for interrupting you, Mr. Gravatt. You are going to qualify Dr. Hooker in what field, as an expert?

Mr. Gravatt: As an expert in educational finance, reorganization, and in connection with the racial elements that may be involved in such reorganization.

The Court: Gentlemen, do you wish to cross-examine on the voir dire?

Mr. Lucas: Yes, sir.

* * *

The Court: Anything additional you wish to add by [P-87] examination that is not on the Vita? If so I will permit you to do that before Mr. Lucas or Mr. Little cross-examine.

Mr. Gravatt: Dr. Hooker, in connection with the reorganization studies that you have made have you had oc-

casion to study and to give consideration to racial matters in connection with such reorganization?

The Witness: This has been a central question in all of the large cities where I have worked.

* * *

The Court: On the voir dire.

Voir Dire Examination

By Mr. Lucas:

Q What cities have you worked in where there was reorganization of the school systems and the racial question was involved, sir? A St. Louis, Kansas City, Cincinnati, Minneapolis, St. Paul, and Denver.

Q Can you give me the dates of those, please? A Yes. I have them before me. St. Louis, 1969.

Q That was reorganization within the St. Louis City school system? [P-88] A And the County of St. Louis.

Q And the county.

Was that one school system or two? A It was 35, as a matter of fact.

Q 35. A And Kansas City in 1969.

Denver, 1970.

Q Excuse me. Was that one city or was that a multiple system? A That was a multiple system also.

Q How many? A I don't remember how many school districts are involved in that complex.

Let me indicate that the Kansas City and St. Louis studies were in addition to a state-wide study, so we used all the cities in Missouri.

Q All right, sir.
Next. Denver, 1970.
Cincinnati, 1968.

Q Was that more than one district? A That was a state-wide study.

Q State-wide study. A But the large city that I mentioned of course [P-89] was Denver.

Q Let me ask you, with respect to that was that study of the reorganization of the Denver school district with surrounding eight districts changing in its district organization? A That was an element. This was a state-wide study of school district organization in Colorado.

Q Denver was only a component of the study? A That's right.

Q Where else? A Minneapolis, 1967. This was part of a state-wide study for Minnesota.

Q All right, sir. A Did I mention Cincinnati?

Q I don't believe so. A Cincinnati, 1968. This study was limited to the City of Cincinnati.
Incidentally I had responsibility for writing but one chapter in that particular study.

Q I take it the finance chapter? A No, the organizational chapter.

Q The organizational chapter. Are you just disclaiming responsibility for the rest of the study? A I participated as a team member in doing [P-90] that study; however, I wrote only one chapter and I wrote only the recommendations that pertain to the organization. I did not direct that study.

Q Is there anything in the rest of that study, sir, that you do not support? A I am not certain. I haven't looked at that study in five or six years.

Q Is there anything at the time it was adopted and turned over to the organization that asked for the study that you issued any disclaimer about? A I issued no disclaimer.

Q Were there any others? A I believe—did I mention St. Paul?

Q I think you did. A I just finished a study in St. Paul, 1971.

Q Is that limited to the City of St. Paul or more than one district? A To the City of St. Paul.

Q What kind of reorganization was that? A This involves the question of decentralization of the St. Paul public schools.

Q Did racial integration have any part of your study? A In St. Paul?

[P-91] Q Any of these cities. A Yes, indeed.

Q Was it a function of the study to determine whether or not schools should be integrated or in what manner they should be integrated? A No, not precisely. We did not deal directly with the racial question in the sense that you are using the term.

Q Did it have to do with school desegregation? That is what I am trying to find out. A Indirectly, yes.

Q Were you asked to make any recommendations as to whether or not schools should be desegregated? A No.

Q Did you express any views or did the study express any views as to whether or not schools should be desegregated? A Several of them do. I believe all of them do, but expecially in St. Paul where we speak to this question of how to achieve racial integration in St. Paul public schools.

Q Were there any standards set forth by which desegregation should be judged in these? A Such as a court order?

[P-92] Q No, the standards by which the educators would determine whether or not it was desegregated? A I think not, no.

Q No criterion set? A I think not.

Q Do you consider yourself, sir, an expert in school desegregation? A No, I do not. I consider myself qualified to speak to the questions of organizing public education in metropolitan areas which includes multi-racial groups as is, of course, true in all cities.

Q You are not here as an expert in race relations or school desegregation, is that it? A No. I am not certain there is a discipline or field of study of the kind that you have mentioned, to be honest. I am not sure there are any experts or specialists in that field.

Q Do you consider yourself an expert in any way in that field? A No, sir.

Mr. Lucas: I have no objection to his qualification.

The Court: All right.

The witness is qualified.

[P-93] Now, so there is no misunderstanding, the doctor is qualified as an expert in educational administration,

organization, including organization and reorganization of multi-racial school districts and finance.

Now, is that the way you feel, Doctor?

The Witness: That is correct.

The Court: All right. Fine.

Direct Examination (Continued)

By Mr. Gravatt:

Q Dr. Hooker, I believe you have mentioned most of the studies that you have made except the study that you made for the National Office of Education? A Yes.

Q Will you state what that was, please, sir, and identify and describe it, please? A In 1970 I directed a national survey investigating the relationship between school district organization and educational finance. This study was part of a broader effort which was referred to as the National Education Finance Project.

We completed data on all of the school districts of the nation in that particular study and made some detailed study of the schools in 16 states.

[P-94] The study has been published in two volumes and a summary chapter has just recently been released as part of a larger book.

This was funded by the U. S. Office of Education. I think the contract was for something like $60,000.

Q And you were the director of the study? A I directed it.

Q All right, sir.

Now, Dr. Hooker, what is the sole legitimate purpose of the reorganization of school divisions? A An educator would have to respond to that question by saying improve-

ment of the end product is the sole purpose of school district reorganization. Others might have different reasons such as economic reasons or whatever, but the educator would have to focus on what it is that the school is attempting to achieve.

Now, school district reorganization or consolidation in the sense that you are using it here generally amounts to the combining of two or more school districts into a larger unit to achieve a better base, financial base, population base or whatever to support the educational program.

[P-95] There are many elements of this, many of them have been repeated in this court before. I think I am in general agreement with the testimony of other witnesses on this particular subject.

Q When you recommend a consolidation what takes place in respect to the standards in the systems that are being consolidated? A We generally refer to that, Mr. Gravatt, as leveling-up process or an effort to make available to all of the youth in the area the best elements of the educational services that are available to anyone of the constituent districts. This frequently amounts to expansion of program. It often amounts to increasing or improving salary schedules for teachers. It amounts to aiding educational equipment, supplies, and the like.

In moving in these directions I should say we make it possible for us to expand the program as well. We aren't satisfied with simply leveling up to whatever may be available in the best schools involved in the reorganization.

We are attempting to establish a condition whereby we can employ and utilize educational specialists who are not presently employed by any one of the districts involved or, as you say in Virginia, any one of the divisions.

[P-96] We want to make better use of or utilization of certain expensive educational facilities.

For example, vocational education programs require special facilities, home economics, science, and the like. So we want to get a higher level of utilization, therefore more efficiency, in the system in this particular fashion. I suppose I mentioned earlier, but if I didn't I should have, we are attempting to get a broader tax base generally whereby we can muster the resources or capital outlay, current expense items and the like in the budget.

But the general process is one of leveling up. No school district involved in a reorganization will ever be satisfied with having less after the reorganization is consummated than that particular district had prior to the reorganization.

Q Now, addressing yourself to the three school divisions that are here proposed to be consolidated. Have you made a study and procured information and data on these three school systems? A Yes, indeed. I have spent quite a bit of time in Richmond during the last month or six weeks, and I have looked at schools. I have looked at data with respect to schools. I have interviewed persons in the State Department of Education, talked with a number of administrators and [P-97] other educators in the area.

From these data and others, which I had available to me before I came here, I am convinced that the three separate districts at present offer good quality programs. They have a sufficiently large financial base that we would never recommend reorganization just to achieve a larger financial base.

I observed, for example, that if the three districts were combined we would be speaking presently of a current expense budget in the order of 80 to 100 million dollars. This is far above anything that we have ever recommended in terms of school district size.

There are sufficient pupils in each of the three districts, a sufficient number of pupils, in fact, to put them almost exactly within the optimum size range which has been recommended by every investigator with whom I am acquainted.

Q On that subject, will you give us a brief resume of the studies that have been directed to ascertain what is the optimum or most desirable pupil size of a school division or school system? A Yes. In my work in school district reorganization I have to remain or maintain close contact with the literature in the field. Happily a man by [P-98] the name of Mr. Hickey, Michael Hickey, I believe he is from Seattle, put together a review of the literature and research on this particular topic entitled, the publication is simply Optimum School District Size, in which he lists 24 studies and spells out what investigators have said with respect to optimum size of school districts.

He does raise the question, optimum for what, because you might understand that it would be possible to have an optimum school for a limited purpose and have fewer pupils. But if, for example, your general criterion is quality education, an investigator by the name of Swanson in 1962 said there must be 28,000 pupils enrolled. This would be the optimum size.

Along somewhat later Mr. Havighurst at the same question and in two different studies published in '68 said even a smaller number, seven to eight thousand students.

Moving on down the list Mr. Benson, I believe this is Charles Benson of the University of California with whom I am well acquainted, spoke of general quality. He said an optimum size is 50,000 students.

Mr. Packard in 1963 on general quality said 10,000 students.

A Mr., and I am not taking all of these, I will pick certain typical ones as we go along, Mr. Faber in [P-99] 1966 said for quality and economy you need between 10 and 20,000 students in a school district.

Mr. Fitzwater, a name that has appeared over a long period of time in this field, made a study on quality and economy and he was looking at the minimum range. He said something about at least 5,000 students.

Mr. Dawson, who was the giant in this particular field during a previous era in 1948 said you needed something like 12,000 students.

Moving on down for cost and quality Mr. Hanson in 1962 said there should be 50,000 students in order to have the most efficient school district.

Mr. Vincent in 1966 made two different studies and came up with a range of 12 to 25,000 students.

I will pick one or two others.

Mr. Passow, a name I believe which has been introduced in this court earlier because of some work he has done, 1967, said for administrative decentralization we should begin at the point of 20,000 students.

Well, I could go on. Special Plains Study was mentioned earlier in here. They speak of 30 to 50,000 students as the optimum number for business administration, adult education some 20,000, special education some 20,000 students.

[P-100] So I have before me a list of some 24 studies,

and generally these investigators have concluded that schools in the range of 20 to 50,000 are of the optimum size to gain these particular conditions or purposes which are identified.

The Court: Well, is that your view, Doctor? I think the question was what did you think was the optimum size.

The Witness: Yes, sir. I think that is a fair question. As a matter of fact I have used these kinds of data to guide me in my studies in the cities where I have worked. I can tell you that I have recommended dismantling of school districts that are smaller than the recommended or proposed merger here.

For example, in Kansas City where the school population is something in the order of 75,000 students the recommendation was to dismantle, not decentralize, and I will make the distinction here later, that particular school district.

By Mr. Gravatt:

Q Now, from the point of view of buildings and equipment and qualified teachers and matters of that nature are each of these school systems adequately meeting the standards in that respect, in those respects? A Yes, indeed, they are. And I would like to add [P-101] to that particular list of criteria that I think each district has the capacity to offer an intercultural experience for all students which I include as a very important component or element of the education of any boy or girl.

So it is after I had discovered all of these conditions, and I must emphasize the last one, that I concluded that it would not be wise to recommend the combination of all of these districts.

Now, I did observe a point that may not be terribly impressive to some, but I think it is rather important, that there is presently a wholesome competition between the three school divisions involved.

I speak of competition with respect to attracting good teachers. There is an abundance, presently I know, but this hasn't always been the case. There is competition in terms of salary schedules. One district causes the other to move up just a little bit, therefore improving economic status of teachers in the whole area. There is competition presently in scope of program. I have noted from the material I have seen that each of the districts likes to boast of the fact that it is good at something. That is wholesome.

I think there is some pride in all of these [P-102] school systems. I think it is unfortunate in this trial, and probably prior to this particular trial, the Richmond schools apparently have received more criticism than is warranted. But the general reputation of the schools is something that is protected and apparently revered, shall I say, on the part of the residents.

I note a degree of competition for new residents who come into the area. I submit that that is a wholesome kind of competition that should be preserved. Of course it would not be preserved if indeed the school districts were merged.

Q From your investigation I would like for you to give me a yes or no answer to this. Are there any advantages to be gained from the proposed consolidation? A There are no advantages that are not outweighed by disadvantages. That may not be the answer that you thought I would produce, but I could recognize some possibility for, you know, some kind of a gain which might be identified by some individual.

Q There has been suggested here by some witnesses that there might be some kind of economies that would be realized from central purchasing or from electronic computers of some kind that is beyond my scope of comprehension. Can you tell us whether or not from your experience and your [P-103] studies and observations in the consolidation of these school systems that economies are to be realized from putting three separate school districts together, as we have here, into one large district of approximately 110,000 pupils? A No, sir, there would be no economies. As a matter of fact diseconomies of scale set in at the point, upper limit, I should say, of the optimum size range that I spoke of. Once we organize school into divi sions with more than 50,000 students, for example, we find the per unit cost, that is the cost of delivering a given increment of output on the part of the school system as measured by learning on the part of the students, to increase quite consistently. And I thought Mr. Gross answered that very beautifully when he noted that in New York City it cost twice as much to educate a child as it did in Pittsburgh when he left that city. He could not agree that the education in New York City was twice as good.

Q Now, on this particular point the studies that you have referred to a moment ago in regard to optimum size, will you turn back to it and tell us which ones of those studies address themselves to the question of the optimum size, particularly for economy, and what [P-104] their finding was? A Yes. I have them. I believe there are four identified with economy. The Faber study, which I mentioned in 1966 dealt with economy. He concluded 10,000 to 20,000 students was the optimum range.

Fitzwater in '66. Now, I am sorry, Fitzwater in '58 pointed out that 5,000 pupil minimum was the right number.

McLure, and I am not sure whether that is the Bill McLure who was in this courtroom or not—no, the date isn't given, concluded 5,000 to 6,000 pupil minimum.

12,000 pupils was identified as the optimum for quality and economy by Dawson in 1948.

Q Do you know of any studies that have made a finding that economies are accomplished in the operation of a school system by combining three systems of approximately 20 to 30,000 into one of 110? A No. I know of none.

Q Now, are there, in your opinion, disadvantages that will result from the consolidation of these schools? A Yes, indeed. There is quite a number.

Q First of all what about the administrative management of such a system? A Well, this is a big question with which I [P-105] would like to deal. It is difficult to get a hold of the problems without first talking about what I would refer to as a paradox that one faces when one attempts to conceptualize an organizational structure for schools in a large city.

First, the largeness alone, the size, calls for some form of decentralization or dismantling in order that some of the things can be achieved that were spoken of earlier today in terms of communication, in terms of desegregation and the like, but in the very process of dismantling or decentralizing the larger urban complexes we tend to inhibit both racial and economic integration.

Also within the large cities where I work there is a drive for self-determination in matters of education and local government on the part of the poor and the disadvantaged racial minorities. It is after considering this paradox that one eventually develops some sort of a plan.

I have looked the question of decentralizing the large city square in the face in several instances and been held accountable for the recommendations that I have written.

I have concluded in those situations that decentralization of the large city is not the answer.

[P-106] I say that for some reasons which are very important to me.

First I have observed that it is the center where the rewards and sanctions still reside.

Q What do you mean by the center? A Okay. I am talking about the central administration for the entire school division. We sometimes, in our jargon, refer to it as downtown meaning that the decision with respect to whom is going to be employed, who will be promoted to positions of administration or supervision, or who will be punished, for that matter, reside within the central administration. These cannot be decentralized.

Generally by law the states require that only the school board can employ, only the school board can contract, only the school board can dismiss, and the teachers and the administrators are fully aware of this. Therefore the relationship between the administrator of a decentralized unit and the constituents is of an advisory nature. It is of a polite nature, but it really doesn't get at the question of making the decisions.

I have put it, sometimes, Mr. Gravatt, that under decentralized systems the citizen has neither the carrot nor the stick. And I want to explain that by saying the local citizen has no inducement. He has no reward. He has no [P-107] weight to encourage an administrator or teacher to behave in any particular way.

Moreover, he has no way to punish those who fail to

behave in a manner which he thinks is most consistent with the educational goals of that particular district.

Let me go ahead to say that building administrators in a decentralized system—

Q Let me interrupt. What do you mean by building administrators? A Okay. School principals. All right?

Q All right. A School principals are subject to multiple commands in a decentralized system. This is true because the entire program is never decentralized.

Again the matter of employing teachers, the matter of curriculum development or certain elements in the program such as vocational education, special education, and some of the others, reside with the central administration. Therefore the principal of the building is subject to commands, orders, regulations, what have you, from a host of people feeding in from both the central administration and from the pyramid or cluster or region, whatever you want to call it, that has been established within this large [P-108] complex. And most importantly of all I think decentralization like centralization for that matter, that is a characteristic of all very large school districts, substitute professional control of education for lay control of education.

When the organization becomes terribly large and terribly complex the citizens are virtually denied any opportunity to control the educational processes and we turn public education over to the control of the professional.

I maintain the number one educational issue in this country today is who shall control it. Shall it be the professionals or shall it be the laymen.

Q Now, Dr. Hooker, are there studies beyond your own investigation that support the conclusions that you have just stated? A Yes, indeed. You know one doesn't

dream up these ideas in isolation or total independence. I think I am familiar with the literature in this field.

I have great respect for many people doing the writing. I have been especially influenced by the writing of McGeorge Bundy in his report for the New York City Board of Education. It is entitled Reconnection for Learning. Likewise there is a study that came out of Toronto, Canada, in the past few years that was quite impressive. I footnoted a professor by the name of Polly, [P-109] who is at Teachers College, Columbia University, who has written a great deal on this question of what happens to decision-making and control in decentralized school organizations. He is of the opinion, as I expressed, that the center continues to attract all of the decision-making power and authority.

Q You have referred to the, in a large system, what you call lay control. Does this have any reference to parents, and if it does will you state what importance you place upon it? A Yes.

Q The relationship of the parent and the teacher upon the school. A When I speak of lay control of course I am using a generic term which is broader than parent control, but the most basic element is the extent to which the parent has some voice in determining the nature of the education which his child shall receive. I think of education as a joint venture between the home and the school. I am not willing to turn over to the educator the full responsibility for the education of the youth of the nation.

Someone said not many years ago that education is too important to be left to the educator. I know we educators at the time, I should say many educators at the time, [P-110] were very critical of the gentleman who made the

statement. There is indeed, in my opinion, a great deal of wisdom in that particular statement.

So I see education as a joint venture.

I like to see the conditions whereby the parent and the teacher can interact. They can develop means of communication. Hopefully they will develop some confidence and trust. They will talk about the youngster and his development with periodic conferences and the like.

More important, I shouldn't say more importantly, quite important, however, likewise, is the matter of the collective action on the part of the parents whose children attend a particular school.

I think we need the collective action of parents to both support the school and to coerce the school, if indeed that is required, in order that the lay person can indeed have his expressions expressed in terms of the educational experience.

And you know, as I thought about the plan that has been described in this court for some period of time now, it occurs to me that as an educator if I wanted to turn over complete control of the educational processes to the professionals in this area or any school district, for that matter, I would use the lottery system to assign [P-111] every child to every school. Then those parents using those schools would be so dispersed they would be so spread out that they would have little opportunity to become acquainted. They would have almost no opportunity to know one another and to support or coerce, as I indicated, the teacher or the administrator into behaving in a fashion which would be consistent with their particular choices with respect to the education of their children.

So I am worried about the fact that we would use something like a computer and a birthday to pick people to

attend a particular school because this would diffuse and spread, of course, the resistance, or whatever that might be developed as a result of any particular plan.

I wouldn't predict what might happen, but I am quite certain that the wishes of a parent with respect to the education of the child could not be reflected in that particular kind of system and the professional would have the control of the school system.

Q All right, sir.

Now, what impact—first let me ask you, what importance do you think that the many activities that go on in connection with a school outside of the school room and directly after school hours, that we call extra-curricular activities, what importance do you place upon [P-112] these as an influence and a factor in delivering quality education? A Well, first I would want to use my language in describing these activities calling them co-curricular rather than extracurricular because I see them as an integral part of the school program, and in fact in many school districts these activities occur, part of these activities at least, occur during the school day. Others occur after school.

Generally the school tax dollar is used to support these activities, to pay the salaries of the person involved, buy the band uniforms, instruments or whatever that might be included. I think these are terribly important.

I speak both as a parent and as an educator in this particular respect. I have encouraged the use of co-curricular activities to bring together youngsters of different kinds into these interest groups and develop these talents for a very long time. They are a way of enriching the program beyond, shall I say, the three R's.

I have noted that there is a tendency in very large school systems to have a low percent of involvement in this kind

of activity. The larger the school system the more difficult it is to develop school spirit, shall I say, [P-113] backing and support for school activities, whether it is a band or the debate team or the football team, whatever we may be speaking of.

I think it is extremely difficult to think about the transportation problems involved if we scatter children indiscriminately throughout a large metropolitan area.

I know in many of our districts we do run what we call activity buses which ran at a later hour to return those students that did indeed participate in these activities, but this can multiply your transportation costs quite significantly.

Also I would observe that many of these activities take place in a school after school hours, even into the evening. Most of them, I suspect, are after school and into the evening.

The problem of participating, returning to the school, for example, after dinner would be increased as the distance of the child is, you know, compounded from the school and the like.

So I think it would be very difficult to implement what I like to refer to as the lighted school concept. I didn't invent that language. The lighted school concept, which I think there has been a White House conference [P-114] on, the lighted school, the notion that the school building, school facilities, should be used by both young people and adults for many hours into the evening for adult education, for co-curricular activities, citizenship training, and the like.

That can occur and does occur best and most often, in my opinion, when the school is relatively close to those who use it.

Q Now, I move to another subject, please, sir.

What is the importance to the maintenance of the high-caliber school division or school system of consistent financial support? A Well, everything depends on it. My first response, and I would hasten to say of course that I see financing the school as a means to an end, the financing is no end in itself. But educators have struggled with limited budgets for a long period of time and are terribly sensitive about fluctuations in the support for the schools. Small changes in the amount of money available can result in fairly dramatic changes in the program because most of the school costs are in terms of personnel, you know, up to 80 percent in many school districts. These commitments are made by contract over long periods of time.

If there is any interruption in the flow of [P-115] funds it is generally those things that we can buy beyond salaries that are first interrupted or first cut when the budget must be cut. So it is for that reason that educators for many decades have said that the best arrangement for financing schools is to have a single school board with tax-levying power. In other words, a fiscally-independent school board answerable to those citizens who elect them. And this is the pattern that is followed in most states.

I recognize that Virginia is not of this type and in fact school board members in Virginia are appointed rather than elected. Perhaps this explains in part why they don't levy the taxes. I know of no state where tax-levying authority has been delegated to an official not elected directly by the public. But your system, of course, provides an exception. You have a board of supervisors to levy the taxes. You have the board of education for, shall I say, spending the money or managing the affairs of the school.

This indeed has operated somewhat satisfactorily, apparently, and you people wish to retain it.

I would say that in Minnesota they don't have that particular system and as far as I am concerned you can keep the one you have and we will keep the one we have.

Q Now, it is suggested here, sir, that the [P-116] consolidated system would be managed by a single school board and that the revenue would come from the three tax-levying bodies in the three political subdivisions.

Will you tell me, please, sir, what, in your opinion, will be the effect of such an arrangement and what are the prospects for maintaining a quality educational program in a combined school system given those conditions? A Well, it seems to me that getting agreement among three separate fiscal agencies or bodies with respect to the priorities in terms of education and the level of support would be extraordinarily difficult under ideal conditions.

I speak of an experience that I had in Pennsylvania some time ago. As my record shows I was a professor at the University of Pittsburgh for five years before going to Minnesota. Pennsylvania experimented with the joint school system in the 1950's when I was there. Pennsylvania found that in absent any problems pertaining to race at that particular moment in that state those joint school boards had enormous difficulty in agreeing on anything. Those joint school systems have all been abolished in the State of Pennsylvania in the past several years.

I listed some of the arguments that I remember there, in fact in the district where I lived. And I can tell [P-117] you that some of them are fairly significant and some of them aren't.

For example, we had arguments about where to locate the school. As long as we had two or more separate fiscal

agents responsible for providing the money to build the schools we could not move forward with respect to bond elections until there was some agreement on where the school was going to be. You can imagine the difficulty that we might have had there.

We had school boards meet for weeks attempting to agree on whom they should employ at the School Superintendent. Just a simple matter as that.

We had questions with respect to the school calendar, what holidays shall we declare. We discovered that some of the districts had people of a particular religious faith who would observe some holidays that would not be on the calendar of persons of a different religious faith.

School bus routes became a problem. We had all kinds of questions with respect to school program and services. We had questions with respect to the vendors.

I don't mean just questions. I am talking about impasses, matters that had to be resolved by courts or by some form of arbitration.

[P-118] I would submit that if the particular plan you are talking about here came into being the principal issue when it came time to select school board members would be how is the lottery going to be conducted. It would have nothing to do with the qualifications of an individual to serve on the board of education. It would have nothing to do with the quality or scope of services within the schools but how and when are we going to conduct the lottery or are we going to island zone or whatever it may be.

Q Do you think, do you or do you not think that there would be any feasible way to plan for the future development and growth of a school system with three separate tax-levying and fiscal bodies and three separate jurisdictions to which bond issues and matters of that kind would

have to be submitted? A I can see of no feasible way to do it. Again I doubt if you could do this if race were not a question, but certainly given what I understand to be a fairly heated atmosphere in which we are operating I think this would be positively impossible.

Q Dr. Hooker, what has been the experience on the national level within the last recent years with respect to school boards? I mean with respect to the public approving [P-119] school financing and bond issues generally? A Well, I could not escape hearing, of course, the testimony of some of the expert witnesses in this court yesterday. I was aware of the comments that they were making from material that I had read, and especially an article I ran across recently in one of the popular magazines which can be bought at any cigar stand, I think it was U. S. News, documenting the problems that are involved in financing schools around the country, and especially in the large cities. This particular article took the cities one after another and spoke of the program limitations, spoke of the fact that the schools will be closing for long periods of time during the upcoming season because there are insufficient funds to keep those schools open for the entire day. And in that connection, Mr. Gravatt, let me, for purposes of the record, give you a list or enumerate the school districts of the size you are now talking about.

There are 27 school districts in the nation that have 100,000 students or more. This is the league that you are talking about joining. When I list these school districts I think you will recognize them not for the quality of education that they have have there, but by the fact that they were in the headlines in recent weeks with respect to[P-120] problems pertaining to financing schools.

I would list them in alphabetical order by states. In California there is Los Angeles and San Diego. I won't bother to list all the student enrollments. I have them if you want to see them or if you want me to repeat them.

We have Washington, D. C., nearby.

In Florida there are three, four districts of this size. There is, I guess it is Broward, 103,000 students, almost exactly the size district you are talking about. Dade County-Miami. Duval County and Hillsboro County.

As you are fully aware the southern states have county school systems by and large, and this is where you will find quite a few of these large districts.

Atlanta has 112,000 students. Hawaii, which is spoken of as a state school system, one school district for the whole state, is in this league.

Illinois has Chicago with 580,000 students.

The Indianapolis school system has 107,000 students.

Baltimore, 193,000. Baltimore County, 130,000.

Montgomery County, that is in Maryland, [P-121] 124,000.

Prince Georges County, 154,000.

Detroit, 288,000.

St. Louis, the district where I recommended a dismantling, 113,000.

New York, 1,123,000.

Cleveland, Ohio, 150,000.

Columbus, 108,000, again very close to the size we are speaking of here.

Philadelphia, 276,000.

Incidentally I note that Pittsburgh and Kansas City, for that matter, are both below the 100,000 level and are not included on this list.

Memphis, Tennessee, 134,000.

Dallas, Texas, 158,000.
Houston, Texas, 235,000.
Fairfax County, Virginia, 130,000.
I am rounding these off.
Milwaukee, 135,000.
I believe that is the list of the 27 school districts having more than 100,000 students.
I would say that from what I read virtually every one of those districts has serious financial difficulties or problems.

Q Dr. Hooker, is the article that you referred to a moment ago an article that appeared in the current issue of the United States News and World Report which is dated September 13 but came from the newsstand, I think, yesterday? A Yes. That is the article.

Mr. Gravatt: If Your Honor please, I have given counsel for defendants a copy of this article and I would like to file it as an exhibit with his testimony.

Mr. Lucas: I object, Your Honor. The testimony, I think, covers the material matters. I have not read the article, but any other statements in it, it is hardly a scholarly journal.

The Court: I think his objection is well taken, Mr. Gravatt. I put magazines in about the same class as I put editorial writers. They are not much help. The objection is sustained.

Mr. Gravatt: May I make a proffer of the article for the record?

The Court: Sure.

By Mr. Gravatt:
Q Dr. Hooker—

The Court: Excuse me.
Doctor, if you get tired just let me know.

[P-123] The Witness: Thank you.

By Mr. Gravatt:

Q Do you know of any study that has been made which indicates that black children cannot receive a quality education in a school in which they are in the majority? A I know of no such study.

Q Do you know of any study which indicates or suggests that it is beneficial, educationally, to black children that they be placed in schools where the racial ratio is 20 to 40 percent black? A I know of none. I know of studies, however, that have been interpreted in this fashion, and possibly I should elaborate to make sure that I am understood.

Many studies, including the Coleman Study which has been quoted a great deal in this particular court, did observe that the black children in schools where they are in the minority frequently perform better than the black children when they are in schools where they are in the majority, but Mr. Coleman was very careful to point out that this particular observation alone was insufficient evidence on which to ascribe causation because his study was simply a photograph of the schools of the nation as of 1965 and he was very honest in saying that this could not in any way [P-124] indicate why this was so. I mean that any particular racial mix was necessary for learning to take place.

Other studies and different analyses of the same data have come to the same conclusion. As a matter of fact the explanation is very simple. The way housing patterns are established in this country, and the way people go to

chool, we generally find when the black student is in the inority that he lives either in a suburb or he lives in the inge of the city where middle-class blacks and middle-ass whites as well happen to reside.

The evidence that we have does indicate that children om middle-class families generally do better in school an the children from lower-class families. And Coleman nd Armour and others who have looked at this data have id repeatedly that SES, social-economic status, is the ılprit and the efforts to sort SES from race, I think it was Ir. Armour who put it this way, is like trying to sort the d from the white in pink.

I should add, I suppose, that there was a tendency the part of several people who interpret this research to uate blackness with poorness. I am well aware of the ct that many black people are poor, in fact something the order of 75 percent of the black people would be assified at the poverty level in this country today, as I 2-125] understand it.

At the same time this does leave room for the fact that percent would not so be classified. Likewise, there is a irly substantial percentage of white people who are also the poverty level.

Q Now, sir, you have heard the description that has en given here of the proposal with respect to the consoli-tion of these three systems for the purpose of reaching range of racial mix in the schools and the method by hich it is to be accomplished and the program for the change of black students into the counties and the bring-g in of white students into the city.

Will you state, please, sir, what, in your judgment, the fect of this program will be upon the black people? A y honest opinion is, and in making this statement—

The Court: So I get it straight, you mean educationally?

Mr. Gravatt: Educationally, yes, sir. Excuse me.

The Court: That is all right.
Excuse me, Doctor. I just wanted to get that straight.

[P-126] The Witness: All right.
I think we, and I began to preface my remark by saying I know I am wading into very deep water in making the statement, but I want to be as honest and useful to this Court as I can be. I honestly think in identifying a group of people and suggesting, as we are quite directly, that this group of people is inferior and that we Anglos know what it is that causes this inferiority and that we can do something about it, we are insulting that group of people involved. We are indeed becoming paternalistic as we take into our custody their particular needs and propose solutions for those particular needs.

So I could say that to identify persons in this fashion is certainly to achieve what was referred to earlier by witnesses here as the Rosenthal effect, which is to the extent that those who are expected to do badly do badly in fact at schools and those that are expected to do well do in fact do well in schools.

You remember the experiments that were described where the teachers were given information about students, which was not accurate, but indeed the teacher caused the student to learn in that particular fashion.

So it seems to me that too much of the testimony, and I am quite upset about this, has equated blackness [P-127] with badness, black schools as bad schools, black schools as poor schools. I submit that much of that testimony comes from the eyes of people who see this in a racist

fashion. That only a person with this particular set of lenses would be able to see badness upon driving past a school and seeing black children come out of it. Only this kind of person would say it is a bad school.

That one would have to have much more information before one could draw the conclusion that there is any association or relationship between the quality of the school and the color of those that inhabit it.

[P-128] * * *

Cross Examination

By Mr. Lucas:

Q Dr. Hooker, you wrote an article entitled "Relationship of School District Reorganization to State Aid Distribution Systems." I am going to read to you from that article, sir, the first page of the article which appears in a volume entitled Planning to Finance Education.

You wrote as follows: "The Constitution in all states contain language to the effect that the legislature has the responsibility for maintaining a thorough and efficient system of public education free to all young people within certain age limits. In fulfilling these obligations legislatures have generally enacted statutes to permit the formation and reorganization of local school units while most of the responsibility for operating the [P-129] schools have been delegated to these local units. Legally public education remains a function of the state. Moreover, the United States Supreme Court in *Brown* versus *Board of Education* held that educational opportunity within a state must be made available to all on equal terms. Scarce state resources and faulty state aid distribution systems account for much of the observed disparity in educational opportunity within states. Likewise an inadequate local school district structure contributes to this problem.

"The condition is often characterized by overabundance of districts, many of which have limited resources and minimum school populations. Other districts have been gerrymandered to create islands of tax privilege for some while leaving swamps of squalor for their neighbors. Also the flight of the more prosperous urban dwellers to the affluent suburbs and a subsequent tightening of lines between the central city and its suburb have introduced social, economical, and racial stratifications as well as geographic segregation," I am sorry, "separation."

"Equality of education is more myth than reality in many areas of the nation in 1970."

Do you still believe that? A Yes, I do.

Q You also, in a subchapter entitled "School [P-130] District Reorganization" defined the following statement. "Education is recognized as the function of the state. As a result state legislatures subject to constitutional provisions have the authority to establish, maintain, and regulate schools. Thus the legal powers held by school districts are those delegated to them by the state.

"School districts are purely creatures of the state and as such have no inherent powers. They may be created or abolished and their powers may be increased or diminished at the will of the state. The legal restructuring of school districts is referred to as school district reorganization. Such restructuring normally involves the combination of one or more school districts into a single larger administrative unit; however, the division of existing districts such as large cities or counties into small administrative units is also a type of school district reorganization. This type of reorganization which creates additional school districts rather than abolishing existing ones should not be confused

with the internal modification of administrative reorganization."

Then you went on to discuss decentralization. A Yes, sir.

Q You still subscribe to the statements made? A Yes, I do. You are quoting from a chapter in [P-131] a book published about one month ago where I summarized the results of that national study I made and referred to in my direct testimony.

Q Now, sir, you made a statement about *Brown* versus *Board of Education* which held that educational opportunity within a state must be made available to all on equal terms. That case dealt with racial separation in the schools, did it not, sir? A Yes.

Q It wasn't a finance case, educational finance? A That is true.

Q As a matter of fact it said, assuming that you all have the observable manifestations such as teacher salaries, books, and so forth are equal that the separation of the pupils racially was inherently unequal? A *Plessey* versus *Ferguson,* doctrine of the last part of the 19th century, yes.

Q You also made a statement in the same study, sir, that the correlation between school district size and educational cost is not very high. The five variables examined in the regression analysis school district size contributed the least. Does my reference to that particular point take it out of context in any way that misstates your [P-132] view, sir? A Will you repeat the quotation, please?

Q Be glad to. I will start from the beginning of the paragraph which may be more helpful to you.

"Small districts tend to incur large per pupil expenditures. The existence of large numbers of small school districts explains in part the variation in educational expenditures; however, the correlation between school district size and educational cost is not very high. Of the five variables examined in the regression analysis school district size contributed the least." A Sure. I remember writing that statement, and it is accurate.

Let me explain that school costs are extraordinarily high in very tiny or small school districts.

Q Obviously per pupil expenditure would be higher? A In a school district of the Midwest, for example, per pupil cost may be a great deal higher than they would be in the cities in the same area. Likewise costs in the very large school districts are rather high.

So when we establish the correlation or the relationship between the two variables we find a rather low positive correlation between them.

[P-133] Q What were the variables in your regression analysis? A Oh, heavens, I can't tell you. I don't have the full volume before me.

Q Can you give me some of them? A If you have them I would accept your reading.

Q I don't have them. A I don't have them before me.

Q Was race one of them? A No.

Q Was the wealth of the people in the community, the number of poor people, number of rich people, was that an element? A I believe we had per capita income or family one or the other. We had assessed evaluation per

pupil in school. We had current expenditure per pupil. We had total school expenditure per pupil. We included the state aid per pupil enrolled in the schools and a whole host of variables of this kind.

Q Are they things really that are independent variables or do they co-vary with each other? A They are interrelated.

Q Would you agree with me that they co-vary with each other? [P-134] A Yes, I will.

Q Isn't that one of the faults of regression analysis, it depends on what you put in first what comes out, if the variables are not truly independent? A Yes. And the Coleman study suffers from the same limitation.

Q You also write, Doctor, an article in cooperation among school districts in a metropolitan area, and I am going to read some excerpts from it.

Talking about the twin cities in that particular instance, were you not? A Minneapolis-St. Paul.

Q During the last 20 years the twin cities, like most major metropolitan areas, have been subjected to mounting fractionalization. Then you go on to discuss further and talk about a concurrent development was the clustering of the economically disadvantaged in the central cities of the metropolitan area. These individuals generally were obliged to occupy the least attractive portions of the cities, their presence leading to overcrowded housing and serving as a force to impel unaccepting neighbors to locate in more selective neighborhoods. Were you speaking in terms of racial segregation in housing as well as economic segregation there? [P-135] A Not especially. Mostly economic in the twin cities inasmuch as the black population there is a fairly limited one.

Q Are racial segregation and economic segregation related, Doctor? A Yes, they are.

Q You went on to discuss the pupil populations of the projected growth in the community. You made the following statement: "The basic question generated by such projection is will these conventionally organized and fragmented governmental units support and promote the education of such large numbers of youth or will provisional limitation and separatism characteristic of the current arrangement deter logical school planning for the total area while local pride and a search for identity place severe limitations on cooperation between the governmental units in the area? Their interdependence is apparent."

You went on to list seven criteria.

One, "Suburban residents rely heavily on the economic reservoir which the city's employment opportunities provide.

"Suburban residents strongly dependent upon the cultural and recreational attractions of the two central cities. Suburban residents rely upon the central [P-136] cities to carry a substantial welfare load, the beneficiaries of which in many cases are the parents of suburban citizens.

"Suburban areas have become readily accessible to the cities as a result of massive freeway and urban transportation programs which have to some degree reduced urban tax potential by the extension of land usage demands.

"Five, suburban communities, regardless of their emotional posture on the subject have received enormous subsidization by the central cities during their period of rapid growth as a result of differential revenue allocation programs, particularly in the form of state educational aid.

"Six, urban areas are increasingly dependent upon the

youthful drives and leadership qualities of the suburban population.

"Seven, urban areas because of the lure of suburban location for commercial and industrial expansion are in need of the fiscal partnership with the affluent and youthful families of the suburbs."

Is this generally the criteria and the problems found in most central cities? A I think that is still my point of view, and I am very flattered to have you read it.

Q Let me read from the conclusion of the article, sir. [P-137] "Will educators be capable of responding effectively to the challenges of metropolitan planning? What wisdom and social inventions will be used? Metropolitan areas throughout the country are seething with unrest and disquiet to which inadequate and inappropriate educational efforts are alleged to have contributed. Islands of educational and economic affluence exist in a sea of poverty and ignorance. There is no single solution to this problem. A variety of approaches will be needed. Many of the "sacred cows" in education will need to be eliminated or at least modified. Neighborhood schools, local control, and local school districts should be retained or rejected on the basis of their capacity to deal with metropolitan problems rather than for their sentimental value. The application of cooperative research and development approaches seems to hold promise as a means of managing changes of this magnitude.

"A revision of the statutes controlling education is needed in most states. Just as permissive legislation never achieved effective school district enlargement in rural areas, metropolitan planning for education will never achieve its objectives until the state recovers some of the authority which it has delegated to local boards of education. The

state may choose to transfer some essential functions, such as planning and financing of [P-138] education, to a 'superboard,' or it may elect to establish a single metropolitan board of education. While these options may lack appeal to many educators, the alternative of continuing existing school districts with their individual incapabilities for solving educational problems of metropolitan areas cannot be defended. The probability of legislative and judicial review of public school operations in metropolitan areas increases in proportion to the inability and unwillingness of educators and boards of education to attack problems co-operatively. An illustration of what could happen was provided by Judge J. Skeely Wright of the United States Court of Appeals for the District of Columbia. While delivering the sixth annual James Madison lecture at New York Law School, he observed that the Supreme Court might require that city and suburban school districts merge their operations to achieve racial balance."

Do you recall your conclusion in that article? A I wrote those words.

Q There were several other gentlemen with you on the article, is that correct, Mr. Miller and Mr. Davis? A That's right, but that is my language.

Q How is Richmond with its existing school population and with the projected population, how are the schools in the City of Richmond going to desegregate their [P-139] schools, going to provide a meaningful desegregation, stable desegregation when surrounded by increasingly white and almost all-white school systems immediately contiguous to it? A I think I would begin with this kind of response, Mr. Lucas. I suppose ideally we would have every school system in the nation with approximately 11 percent black

students and 89 percent white, Chi-Am, Mexican-American, what have you. Of course people aren't distributed in that fashion around the nation and to achieve integration of the type to which I think you refer, and of the kind which I have heard described in this court in the past several days, would be totally impossible in large areas of the United States including the twin cities' metropolitan area which is what is described in that particular article.

Q Well, let's talk about Richmond, Henrico, and Chesterfield. The problem that the Court is concerned with, and I think all counsel are concerned with, I am interested in how much Richmond is going to solve that problem in light of what exists in this area, what is projected and what the feasibility of it is in terms of how far away people are from each other? A Let me see if I can approach it this way. I don't understand the law presently to mean that every school [P-140] district in the nation or—

* * *

The Witness: All right. As I understand the law of the land there is no compulsion that every school district have a specific or given percent or number of persons of minority or majority race within them.

* * *

The Court: How is Richmond going to desegregate and keep a stable desegregation program in view of the, as he describes it, existing conditions?

The Witness: Right.

[P-141] You see, Judge, the problem is we are back trying to define the word "desegregate." I can define desegregation in legal terms, if he wishes.

The Court: Educationally, I think. This is your expertise.

The Witness: Okay.

The Court: I think he means it that way, do you? Do you not, Mr. Lucas?

Mr. Lucas: Yes, sir.

The Witness: A public school is desegregated, in my opinion, when it excludes no one because of race, religion, or national heritage.

The pattern that you may observe of a large percent of black in one school district and a large percent of white in another comes as a result of a variety of forces, most of which are not under the control of the school district and many of which are not under the control of the state as well.

By Mr. Lucas:

Q All right, sir.

You say that excludes. So if we simply say anybody can come to this school, is that sufficient? We say the schools are open to all? Is that sufficient to change an existing segregated school system into an integrated one, as [P-142] an educator? A It might be under some conditions.

Q Do you know that it is really working to do so in desegregated school systems, realistically? A Well, freedom of choice plans of course are dead, if they don't work. They have worked, yes, in some cities. They worked very well in Minneapolis and St. Paul.

The Court: Do I understand you now that you are adding, I am not critical of it, but that you are adding another condition to your statement, that a school is desegregated

when no one is excluded because of race and members of both races attend? Is that what you mean?

The Witness: No. I didn't add the latter part, didn't mean to.

The Court: That is what I wanted to be sure. You stick with the original statement, a school is desegregated when no one is excluded because of race. Then you went into freedom of choice because you indicated it was not desegregated if it didn't work.

The Witness: That was in relation to his second question. The reason I have a problem with this, Judge, I come from a state where the Constitution for over half a century has said all the schools must be integrated and many of them have no black students.

[P-143] The Court: Doctor, I have studiously avoided asking very many questions because these lawyers know more about the case than I do at this stage of the proceedings, and they know more about what they want to get, but could you go back to the original question that Mr. Lucas asked and tell me first, I take it your position is that Richmond doesn't need any desegregation, is that correct, under your definition of it?

The Witness: Under my definition the Richmond schools are presently desegregated.

The Court: All right.

By Mr. Lucas:

Q Is that because they are open to all or because they are assigned to particular schools? What is it that makes them desegregated, in your opinion? A Because it is my opinion that no students are denied, no residents within the City of Richmond are denied access to any particular

school because of his race or his religion or his national heritage.

Q Well, suppose a white child is assigned to a school 70 percent black and wants to go to one that is 60 percent black and he is denied. Is he denied because of his race, in your term? A Perhaps I understand the question better now [P-144] that you framed it in that fashion. It is necessary, of course, in terms of planning attendance centers or our population for schools to select some students in and select other students out. They can't all attend the same school, of course.

Q Within the context of your original definition we simply drew a line around schools to fill them up to their capacity and then say that anybody who lives within that line we have drawn is entitled to go to that school. Is that sufficient, in your opinion, to create a desegregated school if students then enroll in that school based on that drawing of the line around the school? A No, not in all cases. It would be in most cases, however.

Q When would it not be? A If as a result of action on the part of the school authorities we had identified certain groups within the school district and had separated them in such fashion that they could not be identified with the school in question.

I am speaking, for example, and probably you aren't familiar with this type of arrangement, but if, for example, you provided housing for the students, or if you had some way of identifying this section as a ghetto and therefore all the students had to attend that particular [P-145] school or if the school board for example failed to take affirmative action with respect to additions to schools or the modification of attendance areas to obtain or maintain some reason-

ble balance within the schools, I would say that is segrega-
on.

Q What if the State Board failed to take some action
correct that action which maintained an existing pattern
the schools of segregation? What effect would that have?
I am not certain that I can answer that question with-
ut more information.

Q Well, suppose the State Board of Education has
pportunities to act and doesn't, just lets things remain
they are, has it not done something in terms of the kind
definition you are talking about in terms of maintaining
segregated pattern? A I understand the question. The
ower of the State Board of Education to assign students
schools and to otherwise control public schools within
state is a matter of statute within that particular state,
nd I am not that familiar with your statutes here. I
an speak in terms of Minnesota and tell you—

Q Tell me generally if a state, a hypothetical state?
P-146] A Generally State Boards of Education would
ot have the authority to assign students to schools.

Q If a state assigns pupils or has an opportunity to
ake changes in the patterns of assignment and instead
ects to leave them exactly as they are in their segregated
ondition, does this create the kind of segregation that
ou are talking about? A Possibly.

Q And if a state—I am sorry. A I am not trying
avoid the question.

Q I know you are not, sir. A But I can't speak in
rms of the power of the State Board in this particular
ate.

Q All right, sir.

Can you really separate in determining whether or not a school is segregated or a school system is segregated? Can you just look at it today or do you have to look and see what was done before? I think you described something about identifying areas or groups of people. Do you have to go back and do that to determine whether it is segregated today? A I am not certain what additional information I would have if I knew the history of the living pattern or attendance patterns within the districts. When I look at [P-147] data, for example presently on Henrico County or Chesterfield County, that is the basic data in which I am interested. I am not at all—well, I shouldn't say I am not at all, but in terms of the present situation I am not impressed with what the attendance pattern might have been in 1950 or '52 or whatever.

Q How about '67-'68? A That might be more—of greater interest to me, but still the present pattern would be the most important, I would think.

Q How long do schools last once you build them, sir, 40 or 50 years? A 75 years.

Q Useful life? A Right.

Q And if you build all of the schools, or 80 percent of the schools in the system deliberately consciously in accordance with state law in such a way that they would be racially segregated, built them for identifiable population groups and said these schools are for blacks and these schools are for whites, can you just then say well now, the schools are open and desegregate the school systems? A Obviously not.

[P-148] Q But that is the fact situation in Virginia,

and if further I give you the proposition that when there was some efforts of desegregation we had the Governor closing schools rather than desegregate them, coming in and taking over the schools and their local school authorities, if I tell you that the Pupil Placement Board took away the power to assign any child to any school vested in one central state office in order to impede, to interfere, to prevent desegregation to the greatest extent possible, if I tell you that tuition grant programs were set up so that school children could avoid integration, could go to private schools, go to schools in other counties, and that the state administered the program, and if a local district such as Norfolk didn't want to participate it still had to pay for those tuition grants, its share of them, because the state merely paid them directly to the parent and withheld that money from the city's funds to do it from other sources, do you think that this kind of role as opposed to your experience in Minnesota, this kind of involvement throughout the state in every aspect of pupil assignment, do you think this makes a difference in the perception of the schools in your term of whether or not a particular pattern or particular school is segregated? A Of course it does. At the same time I am a [P-149] little bit concerned about what would appear to be our willingness presently to vest in some other agency such as the State Board of Education the pupil placement function which apparently got so much out of control under the previous system that you described.

Q They did provide dormitories in this state at some black schools? A Really?

Q Regional schools that blacks traveled from 1,000 square mile area of the district to come to one school be-

cause they couldn't go to the whites' high school in their county. Does that affect your judgment of a segregated school or a segregated system of schools? A We have provided dormitories for students living in remote areas in our state for a long time. I think most of them have been discontinued in recent years.

Q Did you provide them for Negroes to keep them from going to schools with whites in Minnesota? A No, we didn't.

Q Does it make a difference? A Yes, I think it makes a difference, yes.

Q How many municipalities are involved in Dade County, Florida, sir? A It is my opinion that the City of Miami and [P-150] Dade County are the two municipalities. Am I correct? No. More than that. I am not sure, is the right answer to your question.

Q Okay, sir.

There are quite a number? A Okay.

Q You said that looking at Richmond, Henrico, and Chesterfield school systems that they offer adequate educational programs. Is that your statement, sir? A I think so.

Q What about the end product which is what you said is the object of all education? Do they educate children? Do they equip them to live and work in multi-racial societies in all three systems, or do you consider that a goal of education? A Which question do you want me to answer?

Q First of all, do you consider equipping children to live and work in a multi-racial society a valid goal of

education? A Yes. I underlined that in my previous direct testimony.

Q And I am asking you in terms of end product, do these three separate districts presently do that job? A All right. The end products of schools are [P-151] numerous, as I am sure you would recognize.

I heard testimony earlier here to the effect that the school districts involved apparently are producing students presently that are achieving somewhat at a level which is somewhat comparable to that which would be predicted given the scholastic aptitude scores that were reported in court.

I am referring to the testimony of Superintendent Adams, for example, and others to the effect. I recognize that the achievement levels of students at a given grade level in the two counties is greater than that found in the city. At the same time we compared with the predicted score as would come from ability tests and we found that in most cases the students were achieving at a level which would meet present state requirements and somewhat according to what might be predicted. This is but one of the outputs of the system, let me hasten to add.

You asked me about—

Q Before we go to the other output let me ask you a couple questions about that.

Do ability tests and achievement tests measure essentially the same thing? Isn't an ability test just a more general form of an achievement test? A Test experts are in strong disagreement about [P-152] the extent to which these are separated. We have non-verbal ability tests, for example, which are reported to be without bias. They are purported to be, you know, without any measure

of learning. They are applied to youngsters as young as two or maybe one year of age.

Q Let's talk about the ability tests given in this state. Do you know what they are? A No.

Q Lorge-Thorndike. A I am familiar with it.

Q And it generally has written and verbal, non-verbal and has a full battery, does it not? A Right. And to a large extent these tests do measure the same thing. In other words, ability tests or scholastic aptitude tests actually measures a form of learning.

Q Doesn't really tell you what a child is capable of learning, does it? Doesn't measure inate ability? A No. Let me agree with you further by pointing out that most of them have cultural bias built into them.

Q So you really would suspect an ability test and an achievement test to have a correlation— [P-153] A Right.

Q —to each other.

Now, let's go back to the end product of education. You say there is a differential in achievement levels between the county and the city? A Yes.

Q How important, in your view, is the achievement level by itself as a measure of educational quality? A I reported that in all three districts students were achieving at a level which would be predicted or somewhat consistent with what would be the predicted, given the achievement or ability test score, that were made available. So it would appear that all three of the systems are indeed producing a product in terms of the skills that are measured on such tests, in terms of the understandings that are measured

there in terms of the extent to which those tests can measure the capacity of the student to synthesize what he learns. We find all three systems performing quite well, it seems to me.

Q The educational inputs is what are measured by achievement and ability tests in a broad sense of the term? A No, educational outputs.

Q They measure what he has got in? A I am sorry. I don't understand the question.

Q In other words, you give a child an achievement [P-154] test, it tells you how much of what was given he retained and can regurgitate on a test, whether it is strictly school sources or all sources, isn't that what you are measuring with achievement tests? A Yes.

Q So in a sense you are measuring the level of inputs that he has had? A I prefer to use the—I am not evading the question. I will answer it quite directly. I prefer to use the concept, however, that Dr. Pettigrew used here in terms of added value or value added concept of the school recognizing that many children come to school with somewhat of an educational deficit. In terms of the Coleman data it indicated something like one-half standard deviation below the national norm on the part of poor and black children from central cities. So at the end when we found at the end of the sixth grade that these students are still somewhat retarded it simply means that the added value on the part of the school, what the school was able to contribute failed to compensate for that deprivation that had existed prior to the child's enrolling at school. And while I am speaking on that point let me go ahead and say until we do something about early childhood education, pre-kindergarten

education, we aren't going to solve the problem in [P-155] terms of bringing the performance of the poor white and black child up to a standard in the public school system.

Q Children on the average, black children and white children on an average, and I realize that there is a range, come to school reasonably close together in terms of their achievement levels. They are still apart but they are reasonably close together and as they go on through school by the time they hit the fourth grade there is a substantial difference and in general the data shows that it tends to increase at least through the eighth grade? A Yes, it does.

Q If, assuming that the background from which the child comes does not change, does not the differential between black children and white children in these contexts, is this not a measure of difference in the educational product or the amount of education received? A No. You see, you are assuming that once the child enters the school the educational influence of the parents and the community ceases and the educational influence of the school begins. I am unwilling to accept that.

Q No, sir. I am assuming it remains. A The family continues to educate the child while he remains in school. I would describe it as a joint [P-156] venture between the school and the parent.

Q I recognize that I am saying that the parents of the white child and parents of the black child obviously don't change. Quite often the economic circumstances and other deprivations don't change. That remains constant. A Right.

Q The difference is schools. They are in school and they are in different schools as a general rule? A No.

Q White and black? A I don't agree that the observed difference between first grade and sixth grade can be traced directly and solely to the school program.

Q I am not suggesting solely, sir. A All right.

Q But it is a factor, isn't it, that if they are in black schools and white schools that it is a difference in this achievement span or the break between them— A I wish we would limit our discussion on this particular topic to children from poor families. We observed the same phenomena with respect to poor whites as you are speaking of or attributing to blacks. As a matter of fact, [P-157] many blacks do very well in our school systems and therefore I am a little bit confused with the language that we are using.

Q Then you would be in favor of not separating the schools on economic lines, rather mixing them? You said poor. You wanted to talk about poor. You said poor whites and poor blacks tended to be adversely affected by the same things, as I understood what you were saying? A Right.

Q And would it be your recommendation, Doctor, that the poor white and the poor black should be assigned to schools with more wealthy or less poor, perhaps is a better phrase, white and black people? Would that produce some improvement, in your opinion? A Certainly the research on this topic, Coleman included, the Armour analysis, Nancy St. John's and others who have investigated the topic would say that SES, socio-economic status, is the culprit in the problem of educating children within our schools.

Let me say—

Q You amend that to say a culprit rather than the. A

The principal culprit. It accounts for more [P-158] of the variance than any other variable under investigation in the studies that I mentioned.

Q Did it happen also to co-vary with race rather strongly, didn't it. A Yes, it did.

Q So it is very difficult to separate the two out, it is just when the schools are racially separate, and perhaps because of race alone or perhaps because of poverty alone, or perhaps because of both, there tends to be this differential in achievement between these schools which are racially different, isn't that generally true? A That is generally true. The one exception I know about was in Cincinnati where I did work. We had the concept to deal with of what we called the Appalachia white. The Appalachia white is the child from the poor family from the Appalachian portions of this nation that has migrated to the large city who is ill equipped to deal with the complex society that he finds there. He brings to the school a horrible educational deficit and the schools there are unable to compensate for that deficit on the part of the child just as much as they are on the part of the black child.

Q Let's talk about Virginia. I realize that your experience is in Minnesota, longest experience is in [P-159] Minnesota. You said that one of the good things you saw about these separate districts was several competitive factors for salary, scope of program and so forth. You also said that you observed that there was competition for new residents is quite good. As a practical matter in today's world a white family coming to the Richmond area as a result of plant location or what have you, with children in schools, do you have an opinion as to whether or not upon looking at the Richmond schools 70 percent black there would be

more likelihood to choose those schools than a school which is 90 percent white in Chesterfield or Henrico County? A You are assuming the transfer here of an executive for a company that might be moved here, something of this kind?

Q One leaving to take a job, who is white, do you think they are likely to pick the 70 percent black or the 90 percent white school? A They would probably pick a suburban residence. It might be for school purposes or might be for any variety of reasons. They might not have children in school yet but want to live in the suburbs.

Q Talking about a family coming here with children and looking at the schools as a practical matter in [P-160] 1970 in Virginia, where would they be more likely to pick in terms of schools? A I am inclined to agree with the statement that you are making. I think basically or most likely, it is most likely that they would select a home in the suburbs that you are describing. At the same time it seems to me this is all the more reason why the people in the city have some obligation to do something about their schools and to do something about housing of a fairly dramatic nature that would reverse, or possibly retard this particular influence of people from other metropolitan areas.

Q What should they do about housing? How are they going to get more whites to Richmond? A Okay. I obviously don't have the answer for all of these metropolitan problems or I would be much more in demand than is the case.

The Court: Might even be a federal judge.

The Witness: I would suggest that you do something as dramatic as you did with respect to building the Coliseum.

Place your priorities on something that account for people.

By Mr. Lucas:

Q What would you do, clear out a slum area and [P-161] build some modern homes and apartments there and attempt to attract people? A That might be one way to do it.

Q Generally be moving out black people, wouldn't you, when you did that? A Yes.

Q And if they are restricted in the housing choices in the suburbs would they be likely to produce a desegregated pattern of residence? Has that been the experience with urban renewal, with any other clearance projects like interstate highway? Has that been our experience nationally? A There has been a great deal of resegregation of the cities when we have had urban renewal, that is true.

Q So clearing out another Coliseum area isn't likely to produce as dramatic as that may be in looks it is not likely to produce an influx of whites into the city in the city schools? A I didn't mean to imply we should simply destroy the homes of the poor people and give them no place to live. I meant to say as perhaps what happened at the Coliseum, I don't know. I am referring to the fact that you place on your list of priorities the building of schools and the building of houses somewhere of equal to or above the [P-162] building of the Coliseum which might amount to reconstructing homes for poor people, you see, or possibly for wealthy white people as well. Some of the most expensive apartments that I know of presently are in the downtown sections of large cities.

Q And do the children go to private schools or do they go to public schools, as a rule, Doctor? A I don't know.

Q What about the fact that poor people have less housing choice, poor black and white, because the counties won't participate in public housing and they won't participate in certain federal programs that apply to the lower black income strata? Is this an inhibiting factor on the choice of schools? A Yes, it is. This is a part of the problem. And as you and I know, Mr. Lucas, presently we are attempting to solve a variety and a very social problem using the schools possibly as the frontrunner in this particular endeavor.

There are other devices available to government, many of which have not been exercised or utilized with the same vigor that we have used public schools.

Q Hasn't education always been the frontrunner, the breaking ground for people to become more upwardly mobile? [P-163] Hasn't it always seen this as one of its goals in our society? A Yes, it has. And I am not denying that this is a worthy purpose or goal of the public school today. I am a little disappointed that we find it to be somewhat alone, possibly, in this particular effort.

I note for example that within our society there are social problems. For example, unemployment is a serious social problem presently.

Q Are blacks disproportionately represented in the unemployment range? A Yes. We don't plan to use the schools to employ people simply to, you know, reduce the rate of unemployment. We have not put the school in the active employment business in order to reduce unemployment.

Q Hasn't the federal programs with teachers' aides, hired a lot of poor black people and a lot of unemployed

people? A Not for that purpose. I know of no federal program that is designed as a relief program or unemployment program. They are educational programs.

Q Is the unemployment rate among black people a function of lack o educational opportunities and other forms of discrimination? [P-164] A Yes, it is.

* * *

Q You talked about optimum size of 20,000. Actually the proposal which is just a suggested plan of desegregation in the City of Richmond, Henrico, and Chesterfield provides for these optimum size districts, does it not? A Yes. I have no quarrel with the size of the subdistricts that are proposed here.

Q Now, you talked about the studies of decentralization. You said that you had some quarrels about decentralization because it tended to inhibit social and socio-economic integration. Would you expand on that a little bit and tell me why you think that and in what way it operates? A Well, decentralization takes several forms within these big cities, but one of the most common patterns is to divide the city or the area into segments or [P-165] subdivisions or sections where we may find a fairly homogeneous population. For example, when you divide the City of Chicago or Los Angeles or St. Louis, for that matter, into a series of subdistricts you will normally have some that will be very homogeneous in terms of the race and in terms of the economic status of persons who live there. As a matter of fact, I can describe for you one district within the City of St. Louis where every single resident lives in federal housing. There is no tax base whatever to support schools.

Q In some districts they are almost all of the people on welfare? A Yes, sir.

Q Doesn't have to be that way, does it? You could decentralize like Richmond has with the consolidated school division where the districts are not drawn to be homogeneous, racially or economically? A Certainly if you are to form a single metropolitan district here, which I don't recommend for reasons which I am sure you understand, the policy of drawing the lines in such fashion that you will have a homogeneous population insofar as this is possible would indeed be a positive factor in the plan.

Q You mean a nonhomogeneous population? [P-166] A I am sorry, heterogeneous, yes.

Q That is exactly what the Detroit School Board did when it adopted its decentralization plan, is that correct? A I have maintained some contact with the Detroit situation. One of my former students is very deeply involved in that litigation there but I don't know the details. But I am of the opinion that I have visited Detroit many times and I can think of no way to draw the line in that city or in Chicago, any of the very large metropolitan areas, whereby you could obtain a racial mix of the kind you are talking about in this particular lawsuit.

* * *

Q And that is what Richmond has done here. They have drawn heterogeneous regions, have they not, sir, in terms of the school population? [P-167] A As of this particular point in time, as I understand it, the racial mix in the regions here fall within the guidelines that the plaintiffs have recommended in this particular situation. I am, however, I know of the mobility of the population within

metropolitan areas and I can tell you that by the time you have the plan implemented your numbers would be obsolete.

Q That is true of any school plan, isn't it? You are always changing your numbers? A It is especially true in metropolitan areas. I have gone back and examined the districts that we recommended in the St. Louis area and I am a little bit of ashamed of some of the things I see. And this is but two years ago.

Q Are you aware one of the purposes of the random selection was to remove the premium on such movement in terms of race and desegregation? A One of the reasons for movement would be eliminated, but there are many reasons for movement. And as explained by Dr. Taeuber in this particular court.

Q You mentioned something about the drive for self-determination of black people, poor people in the cities as one of the disadvantages and one of the things you had experienced. Can you expand on that a little? [P-168] A Yes, I can.

It occurs to me that the plan we are now considering in a way disenfranchises the black, if I may be so bold as to make that statement, just when the black is about to wrestle control of a school system, be it in Richmond or any other city, from the white we come up with plans which would, shall I say, dilute the voting strength of that particular group of people, since you like to look at the historical context of things, let me explain that.

The blacks in this nation have always attended school systems which were controlled by the whites.

Many of the young blacks today are very upset about this and do indeed wish to control their own destiny. The

program you have outlined here would make it quite impossible for the black people of this area, it seems to me, to have a major voice in the governance of schools for the Richmond area.

Q I take it, Doctor, from meeting you and your general demeanor that you are not a white separatist, you don't believe in the Ku Klux Klan and keeping white forever, is that true? A That is your statement, not mine.

I do not.

[P-169] Q Do you believe in white separatism? A I do not.

Q Do you believe in black separatism? A I do not.

[P-170] * * *

Q You talked about young people, black people being concerned about just as they were fixing to get control of the system some of these, for want of a better expression, some of the black power rhetoric talks about black control of schools in their community, is that right? A Yes, sir.

Q Is that what you are referring to? A Yes. I didn't advocate it. I recognized it.

Q You just were recognizing this as a phenomenon? A Right.

Q Did you find, sir, that a lot of this tends to be rhetoric from a few rather than a mass movement? A I think that is fair to describe it in that fashion.

Q Have you ever considered, Doctor, that this may be a reaction to 17 years of promises of integration and black people finally coming to the conclusion that white people are not going to integrate the schools, they are not going

to let us in those schools, they are certainly not going to come down here to black schools even though they [P-171] might let some blacks go to white schools, and that our children are not getting a good education and that therefore let us have a try? A I think it does represent a degree of frustration.

Q Disparity, really? A On the part of people who have fought for a long time and have been denied total access to this culture and this economy.

Q Isn't it a sick joke to call Richmond a desegregated school system when it is surrounded by white just across the line, just as that map shows with the white residential areas surrounding Richmond, and they say that a school, Kennedy, which is 70 percent black physically located in Henrico County surrounded by other white schools of Henrico County, isn't that just as frustrating, just as ridiculous to call that a desegregated school community? A Well, not entirely. I think I agree with a part of the concept that you are articulating, but at the same time I recognize that lines generally get drawn somewhere, between states, between nations, between school districts, counties, etc.

Q Compromises in annexation suits, sometimes? A In doing so we do sort—we divide people. [P-172] We divide property. We divide a lot of things. In doing so I think it is the intent of the line drawing that makes it arbitrary or that makes it obnoxious rather than the fact that the line exists.

If that line to which you refer had been drawn to separate black children from white children and that were the purpose of identifying those county lines to which you refer then I would have quite a different attitude toward it.

Q How do we determine purpose? Don't we look at what was done and what happens as a result of doing something from that to deduce purposes? You don't always have a confession, Perry Mason style, on the witness stand, do we, Doctor? A No, we don't.

Q We look at phenomena and we draw conclusions? A Right.

Q And school children looking at the phenomena of the 70 percent black school, in looking down the road they can't tell the difference. They are driving through residential areas or a strip of businesses and right down the way is just like it used to be, a white school from a child's point of view, let's not get into the rationalization and sophistocations of adults, talking about from a child's [P-173] point of view is it still a black school and a white school in the area where he lives? A It would be impossible for me to respond by saying that I know how a black person feels about this. I think that is quite impossible.

Q Do you have an opinion, Doctor? A child, not just a black child. A What is your question?

Q If he is in this black school, the 70 percent black school, if you will. A Okay.

Q And just a few blocks away or a mile or so away there is a white school just as used to be in the city limits of Richmond in an area in which you don't have customs, you don't have anything where a bell rings when you cross the boundary, but an area that people cross quite freely, is there any difference, as far as he is concerned, in his perception of that being separate schools? A If your question is does he know that all of the other children in the school are black, I suspect that he does.

If your question is, however, does he think this is a bad school, I think that is quite a different question.

[P-174] Q Well, do you think that he thinks he is in that school because of some artificial boundary? A No. I think he is not sophisticated enough to make that distinction that you are making. I have trouble with it myself.

Q He doesn't even notice the boundary, is that what you are saying? He is not really sophisticated enough to know when he crosses into Henrico and Chesterfield? A I am saying that he does not know, in all probability, he does not know the long history, the many forces, etc., that contributed to the fact that he finds all or most of the other students in the school of the same race.

Q You don't think— A I expect my white children would not make this kind of distinction either.

Q Do you think that black children know something about the history of why black people are where they are, where they live and what their opportunities are and those limitations? A Well, frankly I think the white-controlled public schools haven't done a very good job of educating them about these things.

[P-175] Q You don't think black children know the history of discrimination, isn't that what young black people are angry about? A Right.

Q They know about it, don't they? A They have experienced it, yes. I get your point. It is also true, I want to add, Mr. Lucas, of the poor white people in this country as well. The public schools have never done well for poor people.

Q Doctor, we are not advocating segregating them, either? A Right.

Q So let's talk about black children.

You would agree that white children probably would be less likely to be aware of this history than the black child? A The black child, I am sorry, excuse me.

Q The white child would be less likely to be aware because of the nature of his environment of the discrimination pattern with respect to blacks? A A white child who grew up in rural poverty, as I did, is keenly aware of the effects of poverty.

Q What about race, Doctor? A I was not aware of the fact that I was white [P-176] or black or of any particular race until I attained some level of sophistocation beyond what I think we are talking about now.

Q Where did you go to school, Doctor? A In Illinois.

Q Did you go to a white school? A Yes.

Q Were there blacks in the community? A None.

Q So you didn't have an opportunity to know? A Right.

Q Do you think you would have known, had there been separate black schools in the area you went to school, that there were separate black schools in that community? A Yes, I think I would. And I would—

Q Children are pretty savvy, aren't they? A Right. I think my education would have been strengthened had I had an opportunity to relate to people of other races.

Q If you had been in the same school with them would it have been bad if you knew you were in a white school and there were black children kept in a black school? A Yes.

Q That would have been bad for you? [P-177] A Yes.

Q Okay.

Is it bad for the children, white children in Henrico County, sir, to know that they are in a white school and that there are black children, because of this boundary line, kept in the City of Richmond? A Well, it isn't the best of all worlds. Let me explain that in organizing schools we treat many variables.

Q Would you answer my question and then any explanation I would be happy to have, sir. A I thought I did answer it. I said it would not be the best of all worlds.

Q Well, it would be bad then? A Okay.

Q Is that true? Do you agree? A Bad.

Q All right.

Now, explain.

A All right.

Let me go ahead to explain that in organizing schools for metropolitan areas or for a state or nation, for that matter, we make many compromises. We consider many variables. And in order to achieve one goal or one of the— [P-178] maximize one of the particular goals we may indeed compromise others. And in doing so we do not get a full measure of course of every particular goal that we might wish to achieve. For example, and this would be quite ridiculous to be sure, but in order to achieve total racial balance in all of the schools of the nation we could somehow put 11 percent blacks in all of the schools. No one is recommending this. We are willing to accept something less than ideal, is my point.

Q That is because of feasibility, right? A Right.

I would add, however, that if money is no problem sibility becomes quite a different matter. I have obved, for example, that I travel from Minneapolis to chmond in less time than some of you are talking about nsporting kids on buses within this area.

Q Children are already riding those distances on buses, n't they, in this area? A I don't know.

Q Nothing new for them, is it? A I don't really ow.

Q You haven't looked into the busing times? A I ard the testimony with respect to bus routes, yes.

Q So in summary, Doctor, your testimony is [P-179] t although it is bad to have these separate schools it is l for white children, I take your answer would be the ne for black children, that in evaluating these competvalues that you have described, which is how school ministrators look at things, do you think on a balance s better to keep the schools in Richmond like they are h their present enrollment and their projected enrollnts and leave the white schools in the counties like they , that is on a balance your recommendation as I undernd it? A My recommendation is that we not change school district boundaries as they now exist.

Let me remind you, refer to the suburban school district e as all-white schools when it is my understanding that percent of black in these schools is comparable to the ional average, slightly below 10 or 11 percent, and the viest concentration of minority people in the State of nnesota is in Minneapolis where we have nine percent black.

Q Doctor, I am curious at your fascination with Min-

nesota and national averages and you ignore the metropolitan average in Richmond. Why is the national average so relevant and the composition of the standard metropolitan area in Richmond not relevant? Your explanation, [P-180] justification for the county is the national or Minnesota, but what about Richmond, Richmond, Henrico and Chesterfield? A I am using this example to point out that you too are willing to compromise. You are also willing to accept something less than the ideal.

Q I am not sure that 11 percent is the ideal, Doctor. I am simply saying that schools in such close proximity to each other with such sharply differing racial compositions in your terms are bad for children, and I am asking you if your testimony is that after evaluating the other criteria that you say despite this being bad you would leave them like they are, segregated, separate if you will, from the white neighborhood? A In my direct testimony I said that in my opinion the three school divisions represented here have the capacity for providing an interracial, intercultural experience for all of the students.

Q What kind of interracial and intercultural experience are you going to get in schools 80 to 90 percent black? What are you recommending? A Well, incidentally I am not—

Q Educational TV? A That might be one useful piece of equipment to use, yes.

[P-181] Q So you think showing pictures on television of black and white students would be sufficient as far as— A No.

Q —giving the intercultural experience? A I didn't say it would be sufficient. I said it would be one of the pieces of technology that I would want to use.

Q What if they simply assigned students across the boundaries, sir, for purposes of desegregation, kept this separate character, had some joint volunteer planning and exchanged tuitions, which would be a paper exchange in ADA for students, this would maintain your separate identities but at the same time provide for desegregation. It would be an increase in transportation costs but only 10,000 at a maximum more than what they are transporting now, wouldn't it? A Well, there are some attractive elements in that particular hypothetical.

Q We don't have to go all the way, this is not a consolidation case per se, it is a desegregation case, so we could do the desegregation and leave the consolidation up to the wisdom of the individuals, couldn't we? A Yes.

It does provide some fairly practical and difficult problems of having children attend school in [P-182] districts where their parents have no voice in the control or governance of schools in that particular district.

Q Very extensive state tuition grant program had exactly the same problem, didn't it? A I don't know about it except superficially.

Q From the testimony you heard there was quite a bit of this transporting out to avoid integration, is that right? A Yes. And I should say in most of the states where I have directed school district reorganization problems or studies one of the problems has been the parents living in the common school district or rural area and sending his child to a high school on a tuition basis where he either individually paid for that child's education or the common school district which had no high school paid for such education. I have always argued that that is a form of taxation without representation because he has no voice in the

governance or the control of the schools whatever, yet he sends his children there to school. So the extent to which at least local taxes are used in support of these schools, I would argue that this person doesn't have the voice that should go along with the paying into the support of such schools.

Q You mentioned the carrot and the stick in [P-183] decentralization. Some decentralization plans provide for right of contract for the superintendent for the decentralized region and for the employment of other personnel by locally elected or local appointment board, don't they? A You are presently referring to the one I recommended in St. Louis and that McGeorge Bundy represented in New York City?

Q No, sir. I was referring to Detroit. Thank you for those additions. A The Detroit one no doubt built upon the work I did earlier.

Q But they hired only superintendents contracted with them separately for a period of time and they happened to hire central office people away from the central office? A The point, and I did promise the Court earlier I would make the distinction between a decentralized system and a dismantled system, and in my opinion we have a dismantled metropolitan system or city system when the powers normally held by local boards of education have been legally by statute placed in the hands of or delegated to community boards or boards within the city. This would include the power to contract for employees. It would include the power to operate the schools in every fashion except race. The revenue or levy taxes for their support which I would place [P-184] and have recommended placing on a metropolitan basis.

Q So you think that raising money for education on a metropolitan basis is good under some super-board? That was one of your recommendations? A This was recommended in the St. Louis area, especially because of the physical disparity that we found between the wealthy suburban districts and the poor suburban districts.

I remind you there are some 22 school districts in St. Louis County, the poorest one being Kinloch, an all-black suburb, incidentally the oldest suburb in the United States formed after the Civil War when blacks were not allowed to live in the City of St. Louis, to the wealthiest one in the nation of Clayton. These two suburbs are only a mile apart, or something of that kind.

So the plan that we recommended would levy a uniform or umbrella type tax throughout the metropolitan area for the support of schools, but I want to remind you that that plan says quite specifically that no child will attend school next year in any school different from the one he attended this year.

Q This black district you are talking about, was it a separate school entity? [P-185] A Yes, sir.

Q You didn't recommend consolidating the black district with the white district? A Yes, we did.

In the fragmenting of the central city we also recommended a combining of the small suburban districts to which I refer reducing the number of suburban districts from something like 22 to five or six. In that case Kinloch would join the Ferguson school system and Lindbergh school system to form a separate subdistrict within that metropolitan area.

Q I haven't read it but as I understand you said let's draw a circle around the area and divide the pie differently

and make smaller districts than the whole district? A Yes. As a matter of—

Q By having over-all taxing authority for the entire area— A As a matter of fact what we used in Missouri and some other states was simply follow the state planning agency in terms of the economic planning units for that particular state and recommended them as for presently I will say intermediate school districts. By the way, I did some looking into that, into Virginia, and noticed the [P-186] legislature in 1968 instructed the Virginia Division of State Planning and Community Affairs to suggest planning districts by the end of 1969.

In June of 1969 this division recommended 22 districts for the State of Virginia. This is part of the study which I did nationally. And I know about these in all the states.

Richmond is included in the district, in District 15, which includes Henrico County, Hanover, New Kent, Chesterfield, Charles City County, Powhatan and Goochland. The total population is 554,000.

Funds have been provided for these 22 districts, as I understand, something between 5 and 25,000 dollars for planning. And it says the actual for planning including education. So your state division or State Planning and Community Affairs is looking at this metropolitan area, as I described it, and is including educational planning as one of the elements under consideration.

Q So if we follow the Missouri pattern you would recommend a super-board dealing with finance and tax-levying authority with a breakup of regions within that planning district? A And include all of those units that I [P-187] mentioned.

Q That is like Dr. Gross suggested that in the City of

New York you might break it up into smaller districts but take in the suburbs in order to merge it to desegregate the City of New York, didn't he? A Yes.

Q Were you here when he testified? A Yes.

Q That was essentially the same type of thing that he was suggesting that you have suggested in St. Louis and elsewhere? A Yes. In St. Louis the study went further than the McGeorge Bundy study in New York City in that we included suburban districts in the plan.

Q You mentioned Toronto, Canada. Did you know they have separate schools for a number of ethnic groups in Toronto? A No.

Q You seemed concerned, sir, about substituting the professional control for lay control? A Yes.

Q Again dealing with a less than ideal world, sir, do you think if we had left it to the lay people and the politicians and the educators in Virginia that we would [P-188] have had any desegregation of public schools or was it necessary for the courts to act? A I have taken notice of the effect of the courts and in terms of educational practice, and especially desegregation of schools for some time and I have applauded that particular development in writing that I have done.

What would have happened short of the court action you are describing, I am not certain.

Q If there is a substantial, and I think you noted it yourself as an added factor here, hostility or fears with regard to race, as a practical matter with a school administrator, no matter what he personally might like to do, is he really free to desegregate his schools? A Generally, no.

Q He is hampered, as you said, if you leave it to popular vote, things of this sort, educational progress does not necessarily happen? A That is very true.

Q You criticized the computer selection, the random selection for pupils. If you were in charge of drawing a plan for the metropolitan area you indicated that you would prefer island type zoning, or this would be the first rank of battle on the new board, didn't you? A I indicated that the method used to select [P-189] children to be transported would become the principal issue in school board elections for nominations or whatever.

Q Of course there is the possibility that it could already be determined by an order of the Court, is that right? A True.

Q But assuming that it wasn't and you suggested island zoning—may I approach the map, Your Honor?

The Court: Yes.

By Mr. Lucas:

Q Suppose you selected, and this is a census tract here, whatever you might be, explain to a parent why you picked this particular little census tract, said that is an island zone. We are going to transport it into Church Hill in the City of Richmond. How would you, as an educator, politician, this zone and not this one over here or not this one over here? Why me? Isn't that a problem the educator is going to face? A Sure it is a problem.

Q So do you think—are you saying that the motive of the Richmond Board in suggesting this desegregation plan is one alternative in using this factor that was designed to take control away or to provide a rationale which would

not [P-190] involve personnel selection? A No, I did not mean to suggest it was some sort of sinister plot.

Q I didn't think you did. A But it would be the result, was the effect of my testimony.

Q Might give more control to administrators, but at the same time— A Right.

Q —would not avoid the problem of people feeling that they were somehow picked on as opposed to other people? A Yes, it would.

Q And if everyone was subject to the same chance this would tend to at least eliminate one source of resentment? A Yes. The thing I objected to, and sort of obliquely, possibly, is the fact that this has been referred to as an objective system in this court and I would argue that the island zone is also objective, you know, because—

Q Could you convince a layman that it was? A The question of human error is not involved in other systems. I think the strength of the plan and the reason, probably, that it was selected is that it dissipates [P-191] the resistance or dissipates the hate that would be developed as a result of the program. We can blame the computer now, we can blame the piece of equipment. To that extent, you know, it is dehumanizing. It is not consistent with the way we would normally approach an educational question.

Q But it would remove the question of singling out individuals for different treatment than other individuals, wouldn't it, sir? A Yes.

In the same fashion in which the national lottery does for the Selective Service.

Q Do I understand you, Doctor, that assuming the, put

aside the questions of what we may or may not know or agree about about what state law says, that given this school community and these facts in terms of race that consistent with your previous pattern of recommendations that you would probably recommend breaking up the area into school communities which were heterogeneous in terms of race and having some over-all taxing authority, some board having a taxing authority for the whole area? Would that be good education to you? A If you approach this area for a study, if I were invited to make a study of the area.

Q Without reference to limitations on local [P-192] laws at this point. A Let me assume, if you will, and this may not be within the assumption you are making, but let us assume that the entire area was a single school district.

Q Right, sir. A As was the case in—well, it wasn't the case in St. Louis, but let us assume it is a single school district and I am invited in to make a study with respect to the organization and control for this particular area.

First I would urge that we have a single agent or agency responsible for producing the funds for the entire metropolitan area. I would not be happy with or satisfied with an arrangement which would include, for example, three boards of supervisors levying taxes and producing the revenue and all that kind of thing.

Q Would you be concerned for a role for the State Department of Education that it perform this function or should it have a role in performing this duty? A I never included that in any recommendation that I have made.

Q Would you consider it a reasonable agency to undertake this? A Not likely.

Let me explain that the State Department of [P-193]

Education is the newest of the several units that govern education in this nation.

First we had states and then we had local districts. Then we had State Departments of Education.

Q Excuse me, sir.

You were in court when you heard that the first superintendent in Chesterfield was appointed by the State Board of Education? A That may be true.

May I proceed?

The Court: Yes. Go ahead.

The Witness: Let me explain that the courts generally, as I understand them, have not been inclined to support State Boards of Education or state education agencies in that function which would be now described as mandatory in terms of withholding funds, generating funds, etc., for the support of schools.

Putting it another way State Departments of Education that have attempted to withhold financial support for school districts in order to enforce compliance with a state regulation have frequently not been upheld in the courts of this nation. So I am not, as you know, I am not as inclined to give to the state education agencies much control or authority as you seem to be ascribing to that particular [P-194] unit.

Q Well, the State Board has had that power here with respect to tuition grants, isn't that true? A I don't know.

Q Did you hear that testimony? A Yes. I heard the testimony. I don't recall the details.

Q All right, sir.

Are you aware in Texas the Supreme Court has required the State Board of Education to withhold both accredita-

tion and funds if certain steps are not taken by school districts with regard to merger and consolidation? A I heard some testimony to that effect. And I am vaguely familiar with the case you are talking about.

Q Okay, sir.

I think I interrupted you. Had you completed? A After looking at this particular school district in the fashion I described in the fiscal arrangement which I talked about I would immediately begin to look for ways to fragment it. I would remind you that I did recommend fragmenting the Kansas City school district, which is smaller than the proposed merger here, and likewise in St. Louis, which was slightly larger, so I would look for ways to divide [P-195] this into more than one operating school unit. This is, I would think, a district of 110,000 would be too large.

Q Would you make your smaller units heterogeneous in terms of race? A You know, I think I have before me the criteria that we used in St. Louis, and I thought about this a little bit, and it occurs to me that such criteria might be indeed useful in this particular project. And I can read you eight items, if I may.

Q Well, tell me, sir, if you will, whether race, heterogeneous racial composition was one of them? A Item five says, "So drawn that each district will represent a heterogeneous population insofar as housing patterns permit."

Q How would you limit it by housing patterns if it was segregated housing patterns? You would leave the schools segregated? A I indeed did in this particular recommendation.

Q I thought you told me that there was a black district

which was a desegregated [*sic*] suburb because the blacks weren't allowed to live in St. Louis and you required or recommended that it be required to merge with a white suburb? A Right. Well, you see within that single study I was dealing with fragmenting a large city which was [P-196] surrounded by a multitude of small inefficient districts so in the combining of the little districts I did indeed recommend that Kinloch join the two larger suburban districts.

Q Despite housing patterns? A It made sense to do it that way.

Q If housing patterns between Richmond, Henrico, Richmond and Chesterfield are segregated and the schools are no more than a mile apart, I think you said those two districts, where does it make sense to merge those? A It would not make sense to place these three districts in a single district. And I didn't recommend anything comparable to that in this particular study.

Q Well, you recommended merger of school districts, one black and one white, they were only a mile apart, I believe. A Well, one black school district with two white as a matter of fact. And let me read to you the total school population that would be involved there. 22,458 would be in Ferguson, Berkeley, and Kinloch.

Earlier I think I said Lindbergh. St. Louis District, Number 13, the way I set this up would include Ferguson, Berkeley and Kinloch. Kinloch is the all-black one. 22,458 students.

[P-197] Q What is the racial composition of the other two districts? A I don't have racial composition by district in this report. I just happen to remember that the Ferguson thing—Kinloch District was the all-black suburb.

Q And what were the other two? A Predominantly white.

Q What were their sizes in terms of pupil population? A Well, Kinloch accounted for a fairly small proportion of the 22,000. So I suspect that after the districts were merged we would have something like 20,000 white students and 2,000 black.

Q Is that racist, sir? Is that recommendation a racist one to put blacks in the minority? A It was not racist.

Q Was that a recommendation that puts black in the minority, changes them from a majority segregated pattern into another pattern where they will be in the minority, is that a racist recommendation? A You are, of course, reacting to my earlier testimony to that effect, so I think I feel compelled to explain what I meant.

I simply suggest that any plan—

[P-198] Q Answer my question first and then I will really—

The Court: Let him answer this way, Mr. Lucas.

Excuse me, Mr. Gravatt, did you have something?

Mr. Gravatt: That is what I wanted.

Mr. Lucas: I think he can answer my question and then explain himself.

The Court: I said he can answer it any way he chooses to answer it.

Answer it, Doctor.

The Witness: I simply meant to suggest that any plan which says now and forever after the black shall forever be in the minority and he cannot have good schools if he gets in a majority is a racist plan.

By Mr. Lucas:

Q Is that what the Richmond plan proposal for desegregating this school community says? A That is my understanding of it.

Q Does that plan not say that proportions shall be as the proportion is in the community, if the community got to be 60 percent black— A The plan also provides for an alteration of [P-199] the boundaries between the subdivisions so that each subdivision will generally represent a proportion of blacks as is found in the total metropolitan area.

Q So that there would not be disproportionate in any manner— A Right.

Q —or repressed, kept artificially low or high in any place? A Right.

Q And would vary depending on what the proportion of whites and black were in the community? A Right.

Q As you understood, Dr. Pettigrew also testified if it went to 60 percent black in the system then the proportion in the school should go to 60 percent black even though he said it wasn't within what he considered optimum range, that was his testimony, wasn't it? A I think so.

Q And does that suggest to you that his motivation was racist, he was willing to go to majority black system if that represented the school community, wasn't he? A I did not mean in this court to suggest that Mr. Pettigrew is a racist or that any other individual is a [P-200] racist. I am simply suggesting that the plan here as presented has those overtones or elements in it. And while I am testifying let me go ahead and say that while we are speaking of pre-

paring people for a multi-racial society I want to point out that the blacks in the world far outnumber the whites and it just might be useful for the black to experience a condition periodically where he is in the minority, where he is in the majority or what have you. I have no faith in a plan which simply says artificially that somewhere between 20 and 40 percent is the maximum number or magic combination.

Q The plan doesn't say that, does it? It says that the optimum range based on what this school community is, and if this school community was something different I think all of the witnesses agreed that that range would change. A It would have to change.

Q Actually there are schools in the proposed plan that fall outside of that range, both above and below, don't they? A Yes.

Q It is not really inflexible or rigid in that respect, is it? A Not to that degree, no.

[P-201] Q And I think I knew you did not intend to say that Dr. Pettigrew was a racist, but you did describe it as a racist concept to say this. Do you understand that the plan says that blacks cannot be in the majority? A As I understand the plan, and I am sure it has been introduced as evidence, the blacks would not be in the majority in any of the subdivisions or in any of the schools within the subdivision.

Q They would not be disproportionately represented— A They would not.

Q —in any subdivision as compared to the representation they have in the school community as a whole, is that

ight? A My word was majority meaning one more than alf.

Q But if they were 50 percent or more in this school ommunity then they would be so represented under that lan? A If the total Richmond metropolitan area be- ame of this population distribution that would be the case.

Q You said assignment to these schools under this plan ould somehow confirm the Pygmalion effect or the [P-202] Rosenthal effect, if you will, that they were in- erior. And you were very critical of some of the testimony ith respect to the achievement and the effects on achieve- ent of certain patterns of enrollment.

Now, if the testimony was, sir, that the students would o well and have done well in the past when they are in ertain proportions, blacks for instance are in the minority, nd if they are so assigned that they are in the minority, sn't the prophecy that they will do well, they will have mprovements in their achievement? A I understand the ogic of the example that you have given me, but I gave he testimony that I did because the plan suggests that the lack cannot learn well if he is in majority and he has to be hat he is to gain that he does not take with him. This is to uggest, it seems to me, that he is an inferior product.

noved somewhere else because there is something there

Q Wasn't there a great deal of testimony that the hite child would gain some things he doesn't have over here in his white school just as the black child could gain ome things he doesn't have in his black school? A Yes.

Q That is the benefit of learning about each [P-203] ther? A Right.

Q Preparing themselves to live in that kind of world? A Right.

Q Isn't that the thrust of the testimony? A Yes. And I certainly subscribe to the notion that every student should have an interracial exposure or experience.

Q Do you think it is paternalistic to suggest instead of being artificially repressed in certain areas and assigned to black schools that the assignment patterns be changed basing it upon the distribution of blacks and whites in this school community, that the assignments to schools be made within a range, not an absolute number, to those schools? A Will you repeat that question?

Q Do you think it is paternalistic— A Okay.

Q —for a school board or plaintiffs in a case, remember the black plaintiffs in this case are recommending this, this is not something imposed from outside, do you think it is paternalistic to say that instead of following what has been the historic pattern in Virginia, the blacks [P-204] are assigned to, in those proportionate numbers, to schools that are black and white are disproportionately assigned to schools that are white, we are going to change that and we are going to, within reasonable tolerances, assign students so that they reflect the community, not the history of repression— A You see, I am not impressed with plans or arguments that now in 1971 substitute paternalism for past prejudice.

Q Do you think this is paternalistic? A Yes, I do.

Q You think the black plaintiffs in this case are being paternalistic to suggest that the Court require that? A I am not sure about the politics of who brought the case to the Court and the like. I am simply saying that we are presently proposing that we substitute paternalism possibly in compensation for past wrongs, prejudice, or sins or whatever word you wish to use.

And I submit that you better back off and take a look at that.

Q You think that black plaintiffs who have alleged in this case that they have been artificially confined in the city limits of Richmond that they have been [P-205] confined to segregated schools, that they have been confined to this community within the City of Richmond because of deprivations in economic opportunity, educational opportunity, and a whole structure of segregated society in Richmond, in Henrico, and Chesterfield in the State of Virginia by State Constitution until commanded by acts of the legislature, do you think that it is paternalistic for blacks now to seek schools, just schools, that reflect the distribution of blacks and whites or proportions of blacks and whites in this area? A If I were certain of the conditions that you established I would obviously answer the question no, but I don't accept a lot of the assumptions that you built into your question.

I want to point out that I think the black can logically conclude that he hasn't done well in schools that have been controlled and offered by the white in the past.

I think the black can make a very legitimate argument for a greater voice in the governance of the school. And I am raising questions about the plans that dissipate this potential for exercising some control over his own educational experience.

If I chose language that is too strong then [P-206] forgive me, but that is all I was trying to describe.

Q One of my assumptions, do you think, are wrong? Do you think there hasn't been housing segregation which

contained blacks to certain areas? A I am sure there have been.

Q Do you think there has not been previous denials of equal educational opportunities from facilities on up? A I am sure there has been.

Q Do you think there has been employment discrimination? A Yes.

Q Do you think that employment discrimination is also affected by previous denials of equal educational opportunity? A They are related.

Q And do you think that housing opportunities are restricted by segregated patterns? A Yes.

Q Do you think that regulations that are not acted upon or options that are not taken which have the effect of limiting opportunities for housing in terms of public housing and low-income housing programs in the suburban areas surrounding a central city, do you think that has an effect? [P-207] A Yes, sir.

Q Well, those are my assumptions.
Thank you.

* * *

Cross Examination

By Mr. Little:

Q Dr. Hooker, to make it a little more difficult, you have just been talking about Richmond. I want to talk about Minneapolis. A Hold on.

Q Doctor, I think you already said what is a school size in Minneapolis, roughly. A Minneapolis has about 75,000 students.

Q And the racial composition, I think you said, was about 10 percent black, or did you mean 10 percent nonwhite? There are quite a few Indians or not? A In 1970 8.9 percent black, 3.0 percent Indian, .5 percent Oriental, .7 percent Spanish for a total of about 13 percent what we might call minority types.

Q All right, sir.

Doctor, recently, according to news reports, and we can't take everything we see, but they have had a [P-208] little problem up there about busing, haven't they? A There is a school pairing project in Minneapolis that is getting underway that has caused quite a bit of, shall I say, disturbance in the community, yes.

Q As a matter of fact it involves two elementary schools, one of them named Field, doesn't it? A Field and Hale.

Q How far apart are those two schools? A About, I guess, two miles.

Q Do you know the racial composition of those two schools last year? A Not precisely. I might tell you—

Q Would you accept 56 percent nonwhite? A In one?

Q Yes.

And two percent in the other? A If you have the facts I will accept them.

Q Well, sir, I think they are close. A That is about right.

Q All right, sir. A Right.

Q Now, did not the school board up there in an effort

to promote desegregation suggest this pairing [P-209] of these two schools? A Yes. I was a party to it, you know. I was Assistant Superintendent in Minneapolis five years ago.

Q And you endorsed that, didn't you, in principle, or have you publicly endorsed that? A I have indeed.

Q Pardon me? A Yes.

Q You have.

Under the plan this year with the pairing it is going to reduce the nonwhite to about 28 percent, isn't it? A I think so.

The reason I am hedging a little bit, let me explain, Mr. Little, that the division of which I am chairman has a contract to evaluate the results of this pairing project that you are now describing. I am not directing the research myself, but the department does have the contract and since the project was announced it is an experimental project. Let me point out that we have a very tight experimental design to evaluate. The result there has been a lot of changing of the rules. I can now appreciate why Mr. Pettigrew and others have so much [P--210] difficulty in doing research in this field because we went in last spring and pretested all these students. We had the design all set up there. There was a large movement of people, voluntary, out of the system. I don't mean they moved their homes, but parents can opt out of that particular pairing arrangement. They are replaced by other students and then the school board announced that it was putting in quite a different educational program in both Hale and Field Schools and our nice little experiment with a control school at another location within the city, the design has been disrupted, to say the least. I don't know the facts of how

many children are involved or the racial components, however.

Q Well, the only point I want to make is it has been a very hot thing, politically, hasn't it? A Yes.

Q And the mayor very much is against this pairing, wasn't he? A Yes, Mayor Stenwick.

Q And yet the school board went ahead with it? A Right.

Q Do you think the school board was correct in going along with it despite the public opposition to it? A Yes. I think they were.

[P-211] I did indicate a moment ago the board backed down from its original stance, however. The political climate is such that it is now an optional program rather than a mandatory one for all.

Q Do you think that is good they made it optional that they should have backed down because of public pressure? A No, I think they should not have. Moreover they ruined our research.

Q They got to meddling in your business, that is something else? A Right.

Q But, Doctor, in principle then I don't think we are apart on that. For instance that did involve pairing and you endorsed that as a means of desegregation, don't you? A Yes.

Q And it did involve more busing, didn't it? A Yes.

Q You endorsed that, didn't you? A Yes.

Q Because the end to be achieved you felt was educationally sound? A Right.

[P-212] Q There was a mother who made a statement about that. She was asked about busing her child. I want to see if you agree with her statement. She said, [*sic*] "Do you object to the child being bused out of his neighborhood?"

And she said, "Our idea of a neighborhood has to be enlarged. We have got to learn to get along with each other."

Do you in principle agree with that? A In principle I think that is a valid concept.

Q I am going to show you substitute Exhibit 30. I think you have copies of it. Now, let's come to Richmond and leave Minneapolis.

Doctor, that substitute Exhibit 30 that you will see lists all of the schools in Richmond for the year 1969 and '70. It gives the percentage of black and white in each school. You will see that during 1969-1970 we operated under freedom of choice. Would you look over those figures and decide for yourself whether freedom of choice worked in Richmond? A Where?

Q I think you will see there were 22 schools 100 percent black. There were five schools that were 99 percent black. There were two schools 100 percent white and [P-213] 20 schools more than 80 percent white. A Right.

I think an examination of the table would lead one to the conclusion that the schools—well, the freedom of choice plan did not result in effective mixture of students within many of the schools.

Q There were educationally speaking—they weren't desegregated, were they? A Sir?

Q From your standpoint as an educator you wouldn't say that we had desegregated schools? A In several instances the schools were of a single race.

Q Right, sir.

So you would agree that, or would you, that they were not desegregated, Richmond didn't have a desegregated system of schools?

The Court: You are about to make my day, aren't you? Would you agree with that?

The Witness: I don't know.

By Mr. Little:

Q Would you agree?

A I would agree that all of the students of [P-214] a single race in some of the schools and therefore the freedom of choice plan had not resulted in the mixing of the students.

Now, if you are asking me to define desegregation in your terms we are in for a long conversation.

Q I am talking about looking at that system, because you deliberately said, as I understood it, that freedom of choice was no good unless it worked. You brought up freedom of choice. A Right. It wouldn't work unless you do something about the program. I expect that one of the reasons it didn't work here is that there were some naive assumption that simply opening all the schools to all the children would cause them to scatter throughout the system. Well, of course that won't work. The freedom of choice plans that have worked, and I can tell you the University of Minnesota operates one, have put in programs that are so attractive that we have waiting lists of black and white wanting to attend that school.

Q Doctor, you talk about building a Coliseum to attract whites. Are you familiar with John F. Kennedy High School? A I have driven past it, yes.

[P-215] Q Well, we like to think of it as perhaps the most modern, very fine architecture, one of the finest high schools in the state. Would you be surprised to learn that that didn't attract whites? A Not especially surprised. The architecture of a building is a plus factor for many of the reasons that have been reported here, but unless something goes on at the end of the line, the bus ride or whatever, except an impressive structure then it isn't worth it and I think it would be unrealistic to expect that a new school building alone is going to cause very much to happen. As a matter of fact, that program I described at the University of Minnesota is housed in a building built about 1930 or '35.

Q All right, sir.

Go back again. You would rather not say then whether from an educational standpoint you felt Richmond schools were desegregated in 1969 and '70, assuming that no one—that everybody had a perfect right to go to any school they wanted to and assuming there were no accusations of any trickery by the school board to discourage people to do it. Would you say those schools were desegregated?

The Court: Yes, Mr. Gravatt?

Mr. Gravatt: I think that this question to the witness ought to include the statement that there was [P-216] imposed upon the School Board of the City of Richmond a legal duty to dismantle a previously de jure dual system of schools.

The Court: I am not sure he is talking about them, Mr. Gravatt.

He said '69 and '70.

Go ahead, sir.

Talking, would you look at the exhibit? I think that is what he wants you to do.

By Mr. Little:

Q I gave you a summary of the figures, sir. You had 22 all-black schools, five more than 99 percent black. You had two that were 100 percent white and 20 that were more than 80 percent white. And you are reasonably familiar with the racial composition in Richmond, aren't you? A Right.

Q So can't you give me your opinion as to whether they were desegregated? A Well, the buildings within the city were not desegregated in many instances according to the definition that you are using.

Q All right, sir.

From an educational standpoint would you think it advisable that steps were taken to change that situation? [P-217] A Yes, I do.

Q All right, sir.

Now, on the next two columns you will see school board plan that actually operated in 1970-'71. A Yes.

Q Now, you realize that going from the freedom of choice to this plan involved more transportation because there was a lot of pairing of schools involved. There was satellite zoning where zones were created on the extreme western portions of the city in order to get whites into all, normally all-black schools such as Kennedy and Mosby, but do you think this is an improvement in desegregation or freedom of choice? A Yes, I do.

Q And do you think that devices used such as pairing and busing and satellite zoning were justified in order to

get these results? A Of course I have limited information about whether or not they were justified. But I certainly endorse the results.

Q You do endorse the results? A Right.

Q All right, sir.

But you noticed under that plan we still had [P-218] about 18 or 19 schools that were for all practical purposes either all black or all white? A Okay.

Q Now, these schools, the only way in the world to integrate those schools in Richmond, and all the experts agreed, I believe, was to noncontiguously pair these schools, taking them in the farthest end of Richmond and pair them with the schools in the west end of Richmond, which involved the cross town transportation of approximately 7,500 or 8,000 additional students.

But as a result of that there are no longer any all-black or all-white schools in Richmond. Do you think that is educationally sound? A Probably it is, Mr. Little. But let me explain that I am not willing to accept the notion that we cannot have a good school if all the children are black who attend. And I think that is what you are assuming.

Q No, sir. I am saying—I am just asking whether what had to be done to get rid of those 19, either all-black or all-white schools, was justified and involved cross town busing of 7,500 students, you see, and transporting them maybe six to eight or nine miles, at the most. But you think that is educationally sound, don't you, sir? A Generally I agree.

[P-219] Q All right.

In your testimony you talk about whenever there is a

merger, that is a leveling up, which is uniformly accepted, isn't it? A Yes.

Q Well, that won't hurt the quality education of any child in these three areas, would it, Doctor, if we took the best out of Chesterfield, the best out of Henrico and the best out of Richmond and leveled up, so to speak, that wouldn't result in lowering the quality of edcuation of any child, would it? A No. That kind of evidence was given in support of, or at least along with the suggestion that there would be no diseconomies in scales. In fact you would expect to spend more on schools than you are now.

Q Right. One of the suburbs doesn't have the kindergarten and that means all of them would. That would be a definite improvement, in your judgment, wouldn't it? A I agree.

Q When you talk about size, Mr. Lucas covered it pretty fully, but when you talk about optimum size you do have to ask the question for what purpose, don't you? A Yes, you do.

[P-220] Q Doctor, Virginia, I think you heard this part of the testimony, for many years has operated joint schools. I don't mean joint school divisions or anything like that. In other words, where two or three different political subdivisions, or maybe more than one, that would operate a joint school, under joint ownership and so forth. Did you hear any of that? A I have heard that testimony.

Q Did you hear the testimony dealing with the rules and regulations that were established by the State Board of Education for the operation of these joint schools? Have you ever looked over those rules and regulations? A No. I have not. I heard the testimony. I may be able to respond

to any question you have, or I may need information.

Q Have you made a study to see, even though the schools were operated by separate political subdivisions and had the financial problems of going back to two and three different boards to get appropriation and so forth, has anyone in your conversation with the State Board of Education said that these joint schools weren't successfully operated? A I have not inquired about them and I have [P-221] had no conversation about them.

Q And haven't read the rules and regulations with how the budget is prepared? A No, I haven't.

* * *

Redirect Examination

By Mr. Gravatt:

Q Dr. Hooker, I ask you now a question that I think is supported by the evidence in this case so far that the lines between Chesterfield and the City of Richmond and the line between Henrico and the City of Richmond has not been drawn or established for any racial reason whatsoever. And that there has been no action by any agency of the State of Virginia to bring about the disproportionate population, ratio of population between Henrico and Richmond and between Chesterfield and Richmond.

Do these facts indicate to you or under the facts do you consider that the school systems, or any schools within them are segregated schools or a segregated school system? A One of the first questions I asked of you [P-222] people who employed me to be a witness in this court was whether or not the school districts in the three constituent municipalities were indeed integrated. I was not interested in participating in a project to preserve segregated schools.

I convinced myself that the schools were indeed inte-

grated and therefore I agreed to be before this particular Court.

[P-224] * * *

ROBERT L. GREEN

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Lucas:

Q State your full name and occupation, please, [P-225] sir. A My name is Robert L. Green. I am a professor of educational psychology and Director of the Center for Urban Affairs at Michigan State University in East Lansing, Michigan.

Q Would you give us your educational background, please, sir? A I completed the public schools of Detroit, Michigan. I have a B. A. Degree in Psychology from San Francisco State College, a Master's Degree in School Psychology from San Francisco State College and a Ph.D. from Michigan State University in Educational Psychology.

Q Would you give us your work experience, please, sir, in the field of education? A For the past two and a half years I have been primarily involved in administration as Director of the Center for Urban Affairs. I supervise a staff of about 33 individuals at the University.

Prior to that I taught in the Department of Educational Psychology at Michigan State. I have been a school psychologist.

Q Where else have you been employed, sir? A While as a student I was a taxicab driver in San Francisco. I have been a prison guard of San Quentin [P-226] in California. I have been a truck driver. I have done a little of everything, I guess.

Q Did you work in Juvenile Court in California? A I worked as a psychologist with the Juvenile Court in San Francisco functioning primarily as a group counselor.

I worked as a school psychologist with the Oakland, California, school system.

Q When was that? A About 1959. I have been a research assistant at the Langley-Porter Neuropsychiatric Clinic in San Francisco.

I was a psychologist at the Lansing Child Guidance Clinic for a period of time.

That pretty much covers my work career, I guess.

Q Would you give us some of the publications you have been responsible for? A I am co-author with two other authors Negro History Series. There is a total of 60 books in that series. I wrote 20.

I have a college level text. I have several chapters in other college level texts.

Q What is the subject of the college level text? A That title of the book is *Racial Crisis in* [P-227] *American Education.*

Q All right.

Is that a book that contains only your work or is this a collection of works? A It contains part of my work and it also contains a collection of several other chapters written by scholars at various universities throughout the United States.

Q Would you give me the approximate number of monographs and other publications you have published? A Over the past five years probably in the neighborhood of 30 to 45.

Q Have you se: d as a consultant of, directed any studies for the U. S. Office of Education? A Perhaps the most major study that I have directed was a study of the educational status of the school children in Prince Edward County, Virginia. That was in 1963 through '66.

I received two major grants from the U. S. Office of Education to assess the educational status of children in that district who were without public schools for a period of four years, I believe, from '59 to '63.

Q Did you actually live in the county during part of this study, sir? A Off and on. The longest consistent period of [P-228] time in which I lived in the county, let's see if I recall correctly, was about three and a half months. I lived there fully one summer for a period of three and a half months, I believe.

Q With your family? A With my family, yes.

Q Do you hold a position as consultant with the U. S. Office of Education or any other group at this time? A Yes. I am a consultant to the U. S. Office Branch of Research Division. I am also a member of the Research and Advisory Council of the Office of Child Development.

I am a consultant to the San Francisco public school system. At the moment I am on the selection committee for the new superintendent that is now being sought for the Detroit public school system and I have worked with numerous school districts throughout the United States during the past five to ten years.

Q What positions do you hold with professional organizations, sir, or have you held in the past? A Yes. I am the Chairman of the Subcommittee of the Civil Rights Division of the Society for the Study of Sociological Issues.

I am on one of the major steering committees of [P-229] the American Psychological Association.

I am on the steering committee of the National Association of Urban Directors.

I am serving on the steering committee of the National Association of Minority Psychologists.

Q Do you hold any positions with the Southern Christian Leadership Conference? A Yes. I am on the Board of Directors of the Martin Luther King Memorial Center.

Q Have you served as a director of the educational projects for the SCLC? A I was National Education Director of the SCLC several years ago and I yet serve as National Educational Consultant to the organization.

Q Have you testified and qualified as an expert in any other courts? A In three school desegregation suits; Detroit, Memphis, and Benton Harbor, Michigan, and served as an expert witness in a housing integration case in Lansing, Michigan, in Judge Noel Fox's court.

Q All right.

We offer Dr. Green as an expert in educational psychology and school desegregation.

The Court: All right.

[P-230] * * *

Q Dr. Green, I first contacted you yesterday evening with respect to you testifying in this matter, did I not? A That is correct.

Q And you happened to be in Washington today and agreed to come down this evening to testify, is that correct? A That is correct.

Q You have not been in a position to do any study of the Richmond public schools or the schools of [P-231] Henrico or Chesterfield County, have you, sir? A That is correct.

Q Have you been given certain information in a very brief discussion with me shortly before taking the stand? A That is correct.

Q Dr. Green, I am going to state some facts and for the purposes of the question if you will just assume that those are the facts.

The public schools in the City of Richmond, approximately 70 percent black, percentage black in the schools has been increasing and is projected to increase in the future. The City of Richmond, and you have seen the map here, is surrounded on the north by Henrico County and on the south by Chesterfield County whose school populations are under 10 percent black. That is generally the information I furnished you, is that correct? A That is correct.

Q Dr. Green, do you have an opinion as to the effect on the perception of a school child in a school in the City of Richmond which is 70 percent or more black of his assignment to that school when a few miles away there is a school which is less than five percent black? A Well, there might be two very brief approaches to the question. Number one there is a body of data—

[P-232] * * *

The Witness: Yes. Very briefly there is a body of data

that supports the point of view that school segregation has a very negative impact upon the self-concept, the full self-development of black children in the United States.

One could readily refer to numerous studies that would support this point of view. However, I might also reflect on the question from a very personal standpoint in that it has been my own personal experience that in the community in which I grew up in and which boundary lines were highly related to the racial character of a given [P-233] community, that as a youngster growing up in a northern urban community which had highly segregated schools this had a very negative impact upon me personally as a youngster.

When any given population is aware of the fact that they are contained in a given geographical community as a function of race this tends to negatively impact upon the way they perceive themselves and their community. So in general in response to your question the impact is a very unfortunate one and a very negative one. It impacts negatively upon motivation, which is highly related to over-all school performance and school achievement.

Q Does it affect the child's image of himself in terms of what his ambitions might be, what he might be able to achieve in the society? A Very much. Because most black youngsters, and I have worked with a large range of black youngsters as a school psychologist, by the time they reach second or third grade they are quite sophisticated about the ramifications of a segregated system. And when they are surrounded by adults who are carefully contained as a function of race in a given community they are able to very readily at the same time ascertain that this is related to later success in life.

That if the white community has the ability and the power and the desire to control blacks and contain [P-234] blacks in a given living area they can also perhaps at another level contain, control, and limit success in life and most youngsters who live in highly segregated systems, they begin to feel that their fate to a great extent is a function of what the white community does to the black community.

And on the whole the concept of containment to segregate very clearly impacts negatively upon ambitions and one's willingness to strive in life.

[P-236] * * *

Q Doctor, community control, can you tell me what that is as an educational concept, what kind of community are we talking about when we use it as an educational concept? A Looking at it historically the term community control was a very meaningful educational concept in that parents who resided in a particular school community at the [P-237] same time played a meaningful role in making decisions about how that school was to operate and to function. PTA's historically have been pretty much involved in implementing the concept.

Q Is it a function, sir, of the people in the school at a particular time, that is the parents, staff, teachers and the children in that school, is that the school community? A Very much.

Q And this sometimes so-called community control, has it not particularly in recent years sometimes been used in association with the black power or black separatism? A Unfortunately the term community control which initially was an educational term has taken on a very highly political emphasis. And the reason for this, and in a sense it

should be and historically has been in a sense completely unrelated to race, but it has become related to race in a political sense, not in an educational sense in that black parents who very often perceive that integration has failed, that the development of multi-racial schools will never fully occur, have resorted to a demand related to controlling schools in which their kids might be involved in as students at a particular point in time. I guess the most is IS 201 developed in New York City in which parents in that community [P-238] pressed for integrated schools and when they discovered that the school process leading to integration that has been established, I should say in New York, had broken down they then resorted to a demand for control of the schools in which their youngsters were enrolled. So in a sense the term community control should not be—should not have at all a political emphasis attached to it, but unfortunately this has become the case during the past four to five years, and I must add too that when we think of the political, I mean community control today, we never think about white suburban communities, never even think about communities that might have 70 percent white population and 30 percent black population. In most of the literature that you examine, that one might examine during the past two to three years, it is interesting to note that whenever the term community control is used typically it refers to 98 to 100 percent schools, all-black school populations. And it is highly related to a press for separatism in the other direction, but whenever you find a school community that is 75 percent or 80 percent white and 20 percent black, 65 percent white to 35 percent black, the whole concept of community control is never a question because we always assume that parents who reside in those particular communities are in control, and they typically are.

[P-239] Q The witness who testified before you, Dr. Hooker, described, perhaps agreed with my description, that this movement for community control was possibly best represented by a small but very vocal group and was a product of the frustrations after 17 years of litigation since *Brown v. Board of Education*. Do you agree with that? A Very much.

Q From your own experience, Doctor, do black people still desire integration in public schools? A I think it is very safe to say that black people yet prefer integration in all aspects of American life.

Q You, sir, as an educational psychologist, do you think that a desegregation plan for a school community which we have defined here as the Richmond, Henrico and Chesterfield, whose racial composition is and has been for many years 70 percent white and 30 percent black, that a desegregation plan for that area which assigns pupils in a range generally from 20 to 40 percent, but going a little below and a little above, do you think that this is a paternalistic plan or is it something you as an educational psychologist and as a black man could support? A I don't see it as being paternalistic at all. I would see it as something meaningful and something that I [P-240] would support.

Q And if the school community's population proportion came 50 percent black you would support that too, wouldn't you, sir? A Yes.

Q Could you see anything wrong with a 50 percent black school if the school community, the metropolitan area, is 50 percent black? A Not at all.

Q Do you see anything wrong educationally with a school that is 70 percent black when the school community

is 70 percent white? A I see that as being very unfortunate and not in the best interest of black or white youngsters in that system.

Q Doctor, I have asked you about black children. You are an educational psychologist. Are there unfortunate results, bad results from white children as a result of separate schools, white in one, black in the other, and if so could you comment on some of those? A Very briefly, yes. Very often we tend to focus on the negative ramifications that segregation has for the black community.

Typically in terms of dollars and cents the [P-241] black community has paid a very terrible price in this nation for being the victims of segregation. But it also has a very serious and a very negative impact upon the white community. We have often said that youngsters, black youngsters often grow up with a very unrealistic perception of self. It has been my experience that white youngsters who grow up in highly controlled white communities having very little contact with other minority groups also have a great deal of difficulty viewing themselves realistically. This is so in the Army. I have been in the United States service. It was always very interesting to note that white youngsters who had had an opportunity to interact outside of a conflict situation with blacks related more openly and freely to blacks in the armed forces than whites who had not had such contact.

Q Was this an advantage to them? A It was an advantage to white soldiers as well as to black soldiers. In a sense it was a real advantage to the Army. It also, I think, allowed both blacks and whites to view each other more honestly and more realistically.

I think the other major concern, and I share this with

my students at Michigan State University, and we have 40,000 students on campus and there are only roughly 2,600 black students out of 40,000, so the majority of the [P-242] kids that I teach are white youngsters, many who have never had much contact with blacks.

I think the thing that always perturbs me, and this is the reason that I tend to make my office very open to white students, I know very well when I teach a class of 600 white students, and my classes run anywhere from 400 to 800 or 900 in a particular class, I know very well that among those 800 students are a number of those white kids in the very near future will be in very key powerful positions in American life. Some will be doctors. Some will be school teachers. Some will be businessmen, some will be realtors and some will be lawyers too, believe it or not. So I feel that it is very important, it is very important for black and whites to have open and honest communication and contacts with each other.

If students spend 12 years in the public school system without getting to know each other, blacks as well as whites, and spend four years in a university and another three to four years in a professional school without getting to know each other, why should we not expect to find open conflicts, as it now exists, 50 miles from my home in Pontiac, Michigan, today. We should expect this to come about.

So I do feel that young white children who someday stand a much greater chance than the average black [P-243] kid, because many more white kids have professional parents, to be in powerful positions, positions where they cannot only implement policy but determine policy, I feel that it is very necessary and absolutely important for them to know black people while growing up. And getting to know them in a public school setting is much more meaningful than just seeing them in the streets or in the kitchen.

Q Doctor, is there a particular school level that the integration effort takes on added significance? A Would you repeat the question, sir?

Q Is there any particular level where the integration process is more important, and when I say school level I mean elementary, junior, senior high? A Many educational psychologists have argued, first of all let me state I feel that it is important to occur whenever possible. If we catch youngsters at their senior year in high school and we have an opportunity to bring them together in a multi-racial classroom it is important to do it at that level, important to do it at the university level as well. However, there is a body of data that supports the point of view that youngsters tend to have less rigid attitudes about individuals of the opposite race while they are very young. So if we can put youngsters in multi-racial classrooms at the pre-school level, that is [P-244] important. But it is very necessary for this to happen at the early elementary school level.

Q Doctor, your family is originally from Georgia, is that correct? A That is correct.

Q And you spent some time in Virginia. Can you tell us from your experience in Virginia, and in particular your study of the effects on black children of the closing by the public school authorities, including the state, of schools in Prince Edward County, can you tell us about the effects on school children of these actions, and can you relate that to a long-term—how long does this effect persist?

[P-246] * * *

The Witness: A lot of attention was focused on the discrepancy in achievement between blacks and whites in the

county and in several other counties in the State of Virginia as a function of the dual system and two, as a function of blacks being out of school for four years in Prince Edward.

However, I am very personally aware of the other negative ramifications of what happened in that community in the sense that many black parents were forced to send their children to various parts of the United States for an education. Black parents sent their children to Kalamazoo, Michigan, to Washington, D. C., to Dade County, Florida, throughout the United States in an effort to in some way find an educational program that would facilitate academic [P-247] process.

In general the price that the black community in that county paid in an effort to bring about an integrated school system was a very high price, both in terms of academic achievement and also in terms of the very negative social impact that it had on the total community.

In other words, large numbers of black families were totally disrupted by the closing of the schools. And it was a black community that paid a very heavy price.

Q Doctor, what effect, in your opinion, does actions such as that, and the history of massive resistance and imposition in Virginia have on the perceptions of black people and their children? A It has a very long-range, again a very long-range unhealthy and negative impact upon the perception that individuals have about the control they can in some way direct towards their lives. And when the state, any state, takes official action, official action towards a given minority group which is highly related to the whole concept of containment, the community doesn't forget that for a very long period of time.

We can make a distinction between a small body of individuals using their power to oppress people, but when a state takes official action directed towards a [P-248] particular minority group in order to contain, manage, and oppress that group, educationally, politically, socially, it has a long-range and very unfortunate impact upon self.

Q What is the effect, Doctor, of having all of the schools in this area, and this has the racial data in terms of the '70 census, 70 percent or more black in Virginia in the context of the history that you have just described, having these 70 percent or more black while schools on the other side the line are less than 10 percent black? A Again that has the same impact previously described a moment ago. A very negative and a very unfortunate one, both in terms of self-concept and also in terms of academic achievement.

[P-249] * * *

Cross-Examination

[P-250] * * *

By Mr. Gray:

Q Thank you, sir.

Is Michigan State an integrated university? A Yes, it is.

Q And did you tell me there were 40,000 students? A This quarter it may be up to 42, but approximately 40,000.

Q And 2,600 of them are black? A We projected this fall that there would be 2,600 undergraduates and graduate black students.

[P-252] * * *

Q Now, is community involvement in the school an important factor in educational life? A It always is, yes.

Q Always is? A Yes, sir.

Q The more you can do to involve the home together with the school the better product you are likely to come out with? A Whenever possible this is true.

[P-254] * * *

Q Well now, Doctor, in a community, in a school system in which 90 percent of the students are white and 10 percent of the students are black, if all of the schools in that system generally reflect that ratio, that racial ratio, is it a desegregated system? A If the school community is 10 percent black and 98 percent of that 10 percent is in predominantly black schools then it is a segregated system.

Q Excuse me. If 98 percent of— A All right. If we have a 90-10 white-black school system and if 90 percent of that 10 percent black population is in essentially one or two black schools then the system is segregated.

Q If the system is 90 white and 10 percent black and every black child in the system is in a majority white school is it a segregated system? A Not necessarily so. You could find that in a 90-10, and I don't want to play the numbers game with you, in a 90-10 system it could well be, it could well be that 90 percent of that 10 percent, depending upon the size of the sample, might be in one or two schools when in fact they could and at the same time the school could yet be a predominantly white school. But it might be possible to yet contain that percentage of blacks in two schools. Under that [P-255] kind of definition we could look upon that system as being a segregated one.

Q You would say that if you are placing the blacks, deliberately placing them in one or two schools that that

would be a form of segregation? A Containing blacks in any sense.

Q In any ratio? A In any sense, deliberately containing blacks is a form of segregation.

Q Whether it be minority or majority? A What do you mean by—

Q Whether you are containing them over here so that they are 90 percent black in this school, or whether you are containing them over here so that you take the whole 10 percent in your community and put them all in one school, whichever way it works? A If the intent is to bring about an integrated system and to work against a segregated system and we deliberately move youngsters in order to work against the deliberate arrangement of blacks in given selected schools which fosters and maintains segregation then that is appropriate in the direction of a multiracial school system.

Q But now, will you try to answer my question. [P-256] Going all the way back. If a school system is 90 percent white and 10 percent black in the racial composition of the students and the schools in that system generally reflect that ratio throughout— A Schools throughout the system?

Q Yes, sir. Is it a segregated system? A Not necessarily so.

Q Well, is it in any sense? A If the 10 percent black is distributed throughout the system, throughout the system and not contained in one or two schools, then it is not necessarily a segregated system.

Q Well, you keep saying necessary. Is it in any sense? A Okay. I will say it is not a segregated system.

Q It is not? A If they are distributed throughout the system and not contained in one or two schools, if that 10 percent is uniformly distributed throughout the system without pockets of blacks, eight percent of the ten percent or seven percent in one or two schools, that is the case.

Q And if a system is 70 percent black and 30 percent white and the students are so distributed in the [P-257] schools in that system that— A Reflecting that percentage

Q They generally reflect 70 percent black and 30 percent white throughout that system. A Across all schools?

Q Across all schools. Is that a segregated system? A No.

Q Now, Doctor, in a system that is 70 percent black and 30 percent white can black children receive good educations? In an integrated system now, this is the whole system, is 70 percent black, 30 percent white, and they are distributed across the system, can black children be educated in that system? A In the context of your question and in the context of the limited information I have about this case, and if I might answer the question in that context, if we are talking about the City of Richmond and keeping in mind that two—

Q I would appreciate it if you would answer the hypothetical that I gave you and then if you want to— A Well, it is very difficult to answer or speak to a hypothetical when at the same time I am responding as an expert witness in a very real situation that has [P-258] implications for this particular case.

Q Well, my difficulty, Doctor, is—

The Court: Let him answer any way he wants, Mr. Gray.

Mr. Gray: All right, sir.

I might say to you my difficulty is that I did not want to try to get into the involvements of the Henrico and Chesterfield and Richmond situation because you disclaimed knowledge in the beginning. So I tried to keep it in a hypothetical. A I have very limited information that I received this afternoon.

Q That is why I tried to phrase the question just that way. Now, if you want to answer it in the context of the Richmond, Henrico and Chesterfield situation I may have to ask you about that. A Well, if I might respond to your question, if a district is 70 percent black, 30 percent white and surrounded by 90 percent white districts as we find in school communities throughout the United States, Detroit being a very classic example, then there are many interests that work directly against the best interests of black and white children in that 70-30 percent district and it would be very difficult to infer that they could [P-259] receive and will receive quality education.

Q If the district all by itself, let's say it is a city in the middle of a desert with 70 percent black and 30 percent white, can black children receive good educations in that system? A That is possible, yes.

Q Thank you.

Does the size, territorial size make any difference in your previous answer with respect to the effects of the surrounding districts? A The surrounding districts, depending upon the proximity of the districts, is highly related to the total environment, is highly related.

Q Do you have any idea of the magnitude of these three districts we are talking about in square miles? A Only in terms of my knowledge of the map here, but in terms of total miles, no.

Q Do you have any idea how far it is from the central city of Richmond down past that orange area down there? A Very vaguely and only in terms of my driving through this area a few years ago on numerous occasions.

Q So you have no idea about the scope? A Some idea but not in detail.

[P-260] * * *

Q Now, Doctor, you have indicated in your direct testimony that in your opinion black and white children arrive at school for the first time in relatively the same educational state? A Not only in terms of my opinion. There is a body of Headstart data that supports this point of view.

Q Why was the Headstart Program instituted? A Well, the Headstart Program is one of several compensatory programs to assist youngsters in facilitating academic achievement.

Q Wasn't it designed primarily to assist black children on the theory that they were not going to be equal when they began school unless they received— A Black and poor children. Headstart was put into effect to try to give youngsters the kind of boost that [P-261] would work against the kind of decline in academic achievement that often comes about as a function of being very poor and at the same time black and in all black school districts.

Q Are you familiar with the Coleman Report? A Yes, I am.

Q Is not your finding with respect to this in conflict with the Coleman Report on that score? A Not at all.

If you will notice in one review of the Coleman Report, I am trying to think of the author's name, Harvard Review two or three years ago which readily supports the point of view that the differences that are often found between first grade black and white youngsters in many instances is not significant. Very small. There is overlap, of course, but in general the differences are not highly statistically significant. This data in Detroit, Michigan, pretty much supports the same point of view. Of course, you might find there are very small differences that are in effect between youngsters who are black and white at the first grade level, but in no way do they approximate the differences that we find are in effect by the time youngsters reach the fourth grade, going through all-black schools versus all-white schools.

[P-262] Q All right, sir.

I agree that the Coleman Report too finds that the spread becomes greater. But are you familiar with the school and family effects on black and white achievement, which is an analysis of the Coleman Study, by David J. Armour? A Yes.

Q Let me read you this quotation from the Coleman Report. I will tell you when I finish quoting and then I will read you what Armour says about it.

First I will start, this is Armour, "One of the least controversial findings in the original USOE study was that black students scored less than white on all achievement tests administered." Now he quotes, "Average black pupil scores distinctly lower on these tests at every level than the average white pupil. The black pupil scores are as much as one standard deviation below the white pupil scores in the first grade. At the twelfth grade the result of the tests show that the black scores are further below than whites." That

is the end of that. That is the end of the Coleman quotation. Then going on to Armour, "The facts that large differences in black-white achievement occurred in the first grade, that the differences did not diminish in the later school grades, and that consistently differences [P-263] were not found in school inputs for black and white lead Coleman to consider family background factors as a major factor in determining achievement." Are you not in conflict with Coleman on that? No. Let me pinpoint one of the major criticisms and deficiencies of the Coleman Report.

I have a chapter that will be published very shortly in a college text focusing on the Coleman Report. One of the major deficiencies and criticisms by Pettigrew and others is sample size. The Coleman Report, the sample size in the study, has often been criticized as being very small and not selected in a very fair and representative sense nationally.

So while Coleman might cite several studies which indicates that there are differences, and there are at times small differences at the first grade level, there are a host of studies which readily support the point of view that the differences at grade one at year six very often are thought highly significant. This is why there is a tremendous press to build in as many supportive programs as early as possible to make sure that the differences do not become apparent as youngsters move through the elementary school grade level. This is another argument for desegregating schools very early in a child's career.

[P-264] So while you may find some differences, if we would sample nationally and widely you would find that the differences at grade one compared to what one would find at the fifth, sixth grade level are very much smaller and very slight.

Q Well, Doctor, you find deficiencies in the Coleman Report, and you find that Dr. Pettigrew found deficiencies in the Coleman Report, is that fair from what you said? A Let me see. There is a body of data indicating that there are individuals who disagree with the sample size and the sample selection procedure in the Coleman Report, and that is highly related to—

Q And was Dr. Pettigrew one of those who criticized? A He was, yes.

Q As between the home and the school, which of the two would you say has the most powerful impact on the child's achievement? A Well, if I even assumed that the home played a greater role than the school, I am sure I would be in hot water with the NEA because teachers are paid. They are paid in a professional sense and should be held accountable for the educational achievement of young children. This is not [P-265] to say that the home is not significant, but for sure I would be very reluctant to even infer that parents can play the same role that teachers can play and should play in the educational process as it relates to educating their young children.

Q So, Doctor, if the children come to the first grade relatively equal, as you have indicated, and they are placed into an integrated school situation, be it majority white or majority black, but integrated, that school should be able, if properly conducted and properly managed, should be able to properly educate those children? A If a school is an integrated classroom in an integrated school with the same conditions in mind discussed earlier, we would be in a position to maximize the educational achievement of youngsters in that particular school in contrast to a school that is highly segregated in terms of the percentage of

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blacks and whites in that district. But once again if surrounding districts that are closely in some way associated with that school district reflect highly-segregated patterns that too has implications for what occurs in the majority district or in the broader district or the larger district.

Q And, Doctor, if since we don't worry too much about the size, if we were to make one large district which [P-266] turned out to be majority white and it were surrounded by a number of other districts which were heavily majority black, would that district have an impact on the adjoining black districts? A Probably it would. And let me say this. Blacks who are living on the fringes or ringing that district, that is majority white, and are contained in the fringe areas, for sure it would have a very, and it does have, a very negative impact.

Q But the containment aspect is very important? A Is very important. Containment is highly related to segregation.

[Q-4] * * *

PROCEEDINGS

(September 10, 1971) (Friday at 9:35)

The Clerk: 3353-R, Carolyn Bradley, et al., versus the School Board of the City of Richmond, et al.

Continued from last night.

* * *

WILLIAM F. LaVECCHIA

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Mr. Byrne: If it please the Court, before I start with Mr. LaVecchia I would like to read into the record a stipulation that counsel have entered into with reference to certain evidence and certain exhibits.

* * *

Mr. Byrne: Counsel have agreed with regard to Henrico's Exhibit Number 17 and Number 18, which are [Q-5] affidavits signed by Chief Justice Harold Snead, former judge of the Circuit Court of Henrico County, and Mrs. Helen B. Loving, Clerk of the Circuit Court of Henrico County, that if they were called to testify their testimony would be as shown in the exhibits.

Further we have agreed to attach to Henrico Exhibit Number 4, which was a vote by precinct on the merger question in the City of Richmond, a list of the precincts of the City of Richmond as of October 7, 1961, from the Registrar's Office showing the breakdown of Negro and white registered voters in each district for the purpose of showing that the predominantly Negro precincts in the

City voted against the merger of the City of Richmond in Henrico County on December 12, 1961.

We have caused to be made an examination of the records of Lawyer's Title Insurance Company in the Planning Office of Henrico County comparing a list of the reported subdivisions in Henrico County which have been insured by Lawyer's Title Insurance Company prior to 1950 for the purpose of determining whether or not these subdivisions were subject to racially-restrictive covenants.

The investigation reveals that prior to 1950 there were 164 subdivisions recorded in Henrico [Q-6] County which were insured by Lawyer's Title Insurance Corporation, and that 73 of those subdivisions contained racially-restrictive covenants and 91 subdivisions did not.

That after 1950 in Lawyer's Title records we found five subdivisions recorded with racially-restrictive covenants in Henrico County. All other such restrictions were imposed prior to 1950.

It should be noted that one of these subdivisions, Shenandoah Place, appears on Plaintiffs' Exhibit Number 127 and Henrico's Exhibit Number 37-A is in conflict. This can be explained because when Shenandoah Place was first recorded the restrictive covenants imposed did not contain a racial restriction. Subsequently restrictive covenants were recorded applicable to the then unsold lots in such subdivision which did contain a racial covenant and which expired in 1958.

The investigation further reveals that Lawyer's Title Insurance records show 191 subdivisions in Henrico County were recorded subsequent to 1950 without racially-restrictive covenants.

District Court Proceedings of September 10, 1971

[Q-9] * * *

Direct Examination

By Mr. Byrne:

Q State your full name and residence, please. A William F. LaVecchia.

Q What is your occupation, Mr. LaVecchia? A Director of Planning, Henrico County.

Q How long have you been Director of Planning of Henrico County? A Twelve and a half years.

[Q-13] * * *

Q Mr. LaVecchia, I invite your attention to Henrico Exhibit Number 16 and ask you if you prepared or had prepared under your supervision a table of zoning classification by acreage shown on that exhibit? A Yes, sir, I did.

Q What is the total acreage zoned included in Henrico County? A 155,773.54 acres.

Q Does that include the entire county? A Entire county, yes, sir.

Q Mr. LaVecchia, are the single-family classifications, other than A-1, shown on that exhibit or classifications in which single-family residences can be built? A Again at the top of the table the RO down [Q-14] through the RTH are classifications which single family can be constructed.

Q Have you computed the total acres zoned in those classifications? A Yes, sir. There are 37,288.72 acres.

Q Mr. LaVecchia, what is the minimum house size permitted under the zoning ordinance of Henrico County?

A 900 square feet with the exception on a great deal of land to 910 square feet.

Q Does that exception apply to all those classifications —strike that.

Does that exception apply to the RTH classification? A Actually in an RTH there is no minimum house size as such. We regulate that by requiring a minimum of 19 foot width and then assuming he has to build some depth to it we get a minimum floor area.

Q What does RTH stand for? A It is a residential townhouse for sale classification.

Q Have you computed from that list the percentage of single-family classifications in which the 900 square foot house may be constructed? [Q-15] A Yes, sir. There are some 23,033 acres or 62 percent of the classification that can be used for that.

Q In addition, Mr. LaVecchia, are single-family dwellings permitted in A-1 agricultural districts? A Yes, sir, they are.

Q And what is the total acreage in A-1 in Henrico County? A 93,047 acres.

Q If my mathematics are correct, Mr. LaVecchia, out of the 155,000 in Henrico County 131,000 acres could be used for single-family residences, is that correct? A That is correct, sir.

Q And what percentage is that of the total acreage? A That would be 84 percent.

Q Would the same be true for the minimum house size? A Yes, sir.

Q What percentage would that amount to? A That would amount to 75 percent of the county would take a minimum house size.

Q Have you also computed or had computed under your supervision the vacant land shown in the [Q-16] single-family designation? A Yes, sir.

Q How many acres in single-family designations are now vacant in Henrico County? A 18,304 acres.

Q What percentage of that does that represent of the total single family? A 45 percent, sir.

Q Mr. LaVecchia, do you know of any law in the State of Virginia or in Henrico County that would prevent anyone from living anywhere they would want to in Henrico County? A No, sir.

[Q-22] * * *

Q Based on your knowledge of Henrico County are there some formerly all-white subdivisions that are now mixed? A Yes, sir, there are.

Q Both black and white? A Yes, sir.

Q Would you name those, please? A There are Central Gardens, sections of Montezuma Gardens. There is a subdivision of Hechler Village known to most people or many people as Eastbourne because the developer trades on it by using that name. Fayette Park, Stratford Village, Eastover Gardens and Oak Hill.

[Q-23] * * *

Q Mr. LaVecchia, I believe you have a small copy of Richmond School Board Exhibit Number 60 which is the 30-minute travel time map, is that correct? A Yes, sir.

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District Court Proceedings of September 10, 1971

Q As a planner, Mr. LaVecchia, do you find anything wrong with that exhibit? A Well, sir, the exhibit says the 30-minute travel time to Capitol Square and then they show 30 minutes going down into Chesterfield and going out in the western end of Henrico. But then for some reason when they go to the north they cut it off before they ever get to the 30-minute limit and when they go to the east they cut it off again before they get to the limits of the 30 minutes.

Q Have you prepared or had prepared under your supervision a 30-minute travel time map which does [Q-24] not contain those discrepancies? A Yes, sir.

* * *

Q Mr. LaVecchia, would you explain the color code on your Henrico Exhibit Number 36? A Yes. We have used a yellow line on this exhibit to represent the 30-minute travel time line taken from their exhibit. We tried to cut it off just in the same fashion as they did. We couldn't duplicate it exactly, but we think we were within reasonable accuracy.

Q Let me ask you this, sir. Have you prepared this primarily to show the travel time on the interstate highways? A Yes, sir. We dealt strictly with Interstate 64 and 95.

[Q-25] Q All right, sir.

Do they bisect Henrico County? A Yes, sir. The green line is our portrayal of where a person could travel from Capitol Square west on 64, north on 95 and east on 64 in 30 minutes.

It shows that you could travel to a point nine miles into Goochland County or outside of Henrico if you were travelling west on 64.

LOSE IN CENTER

If you were travelling north on 95 you could travel 5.3 miles out of Henrico to Hanover or the Ashland interchange.

Travelling east on Interstate 64 you could travel 4.6 miles outside of Henrico into New Kent County.

Then we show a blue line. Now, that line, the green, let me say, Mr. Byrne, was made on using a 40-mile-per-hour average speed. But we don't see how any planner could come to the conclusion that the average speed on interstate routes is 40 miles. Their own exhibit says expressways.

The Court: Excuse me. So I get it straight, is it your position that the City's exhibit is too conservative?

The Witness: Yes, sir.

[Q-26] Your Honor, there are spot speed checks made all the time on these interstate routes and we know that these spot speed checks indicate that the average speed is in excess of 60 miles an hour. So not wanting to portray anything out of proportion we used a 55-mile speed which shows that you can travel 10 miles outside of Henrico County on I-64 west, which takes you past Oilville to the edge of Goochland County and Louisa.

If you travel north on 95 it will take you to the county line of Hanover and Caroline County or 12.4 miles out of Henrico County.

If you travel east on I-64 it would carry you 12.2 miles out of Henrico into New Kent County beyond Providence Forge.

Now, the spot speed checks tell us that the speed on these routes are actually in excess of 60 and we use 60 as the final speed travelling west on 64 where you could travel 12.8 miles outside of Henrico County carrying you through Goochland into Louisa County.

On I-95 you could travel 15.2 miles outside of Henrico County to Carmel Church which is located in Caroline County.

Q Does that take you all the way through [Q-27] Hanover? A Crosses all the way through Hanover into Caroline.

Travelling I-64 east you would travel 14 and a half miles out of Henrico County and you would be several miles beyond Providence Forge into New Kent County.

[Q-35] * * *

Q Were you familiar with the census definition of what is urban? A Yes, sir. Your U. S. Bureau of Census for 1970 says that 1,000 persons per square mile or 1.56 persons per acre is urban.

Q Using Henrico Exhibit Number 38 and the testimony that you have given with reference to population density of Henrico County by magisterial districts were you able to determine the number of acres by the census definition that are urban? A Yes, sir. There are 34,328 acres urban, or 22 percent.

Q How many acres are there rural under that definition, what percentage does that represent in the county? [Q-36] A 121,445 or 78 percent.

[Q-39] * * *

Q Mr. LaVecchia, does Henrico County have any plan for removing the courthouse and administrative complex from its present location in the City of Richmond? A Yes, sir.

Q Was a referendum held within the past year on the

removal of the courthouse as required by law? A On February 23, 1971, we had such a referendum.

Q Did the people in Henrico County vote in favor of the removal of the courthouse? A Very much so, sir.

Q And where would it be located? A Located at Parham and Hungary Spring Road.

[Q-40] Q Does that envision the removal of the courthouse complex as the first phase with the administrative offices to follow? A That is correct.

Cross Examination

By Mr. Lucas:

[Q-46] * * *

Q In your A-1 classification can you build a subdivision, go in with a tract of homes? A Yes, sir. This is done frequently in Henrico County.

Q Lay out the streets and plot the lots and so forth? A Yes, sir.

Q Do you have to have this zoned differently from the A-1 subdivision? A No, sir. We consider A-1 agricultural as a zoning classification and you can lay out acreage lots for subdivision.

Q How about multi-family? [Q-47] A No, sir. Multi-family is a specific classification that you must have.

Q You couldn't build apartments out there? A No, sir.

Q Can you build townhouses? A No, sir. Single family would be your only dwelling.

DISTRICT COURT PROCEEDINGS OF SEPTEMBER 13, 1971

[R-4] * * *

PROCEEDINGS

(September 13, 1971) (Monday at 10 o'clock)

The Clerk: 3353-R, Carolyn Bradley, et al., versus the School Board of the City of Richmond, Virginia, et al.

Continued from Friday.

[R-13] * * *

ROBERT E. LUCAS

was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. O'Brion:

Q Would you please state your full name for the Court, Dr. Lucas? A Robert E. Lucas.

Q Where are you employed, sir? A Superintendent of the Princeton City Schools, [R-14] Cincinnati, Ohio.

Q How long have you been Superintendent of the Princeton Schools in Cincinnati? A Finished 16 years this last year. Starting the 17th year.

Q Dr. Lucas, describe for the Court the creation of the Princeton School District in 1955, please. A Well, the Princeton School District was created in conflict and even in chaos. It came about as a result of a consolidation of eight school districts put into one by action of the Hamilton County Board of Education against the wishes of most of the people, apparently, in the consolidated districts.

You see, Princeton School District is made up or was made up at that time of one city, four villages. It is in

three counties and four townships. It had a very definite cross section of every kind of people, economically, socially, religiously, and in fact when you mention Princeton no one seems to know where it is because there isn't anything in Princeton except the school district and a road named Princeton. The rest is a complete conglomeration of almost everything.

Q When this consolidation took place was [R-15] there any public referendum of any sort? Did people vote on whether or not this consolidation would take place? A The people had no say in it at all. It went into the courts and the local courts heard the case. It finally went to the, after it was fought through the courts and lots of money and time spent, it went to the State Supreme Court and the district was—stayed together as a result of action of the State Supreme Court.

Q When it was consolidated did you have what might be termed the public support of the patrons and citizens of this area? A No. At the time of consolidation definitely not. It was a very divided thing. Even I was the first superintendent and I came in there, even the administrators of the eight districts wouldn't speak to each other and we had fights and brawls of every kind and intense rivalry. In two of the communities where they had formerly had high schools that were extreme rivals they had great hatred for each other. Glendale and Sharonville communities. And no spirit of co-operation from any standpoint.

Q What was the racial composition of the [R-16] Princeton School District at the time of this consolidation in '55? A Between seven and eight percent black at that time. The rest white. Rest were white, yes.

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Q Has it remained very stable from that time up until 1969? A Up until about in 1969 it only increased to about 12 percent black. In the 1969-'70 school year it was about 12 percent black.

Q During your time as Superintendent of the Princeton School District what sort of education program have you developed and what sort of reputation does the Princeton School District enjoy? A We started immediately to try to develop a fine rapport among the people of the district. And I believe we have been able to do that.

We developed an outstanding educational program, one that, of course, we had a good industrial base that helped us with some resources. We developed a fine staff.

We have one of the finest school districts, and I think it is recognized in Ohio as one of the finest school districts in the State of Ohio.

Our academic achievement has been high [R-17] and our various activities have been very, very good.

I would say that over the years we have developed to one of the very well-recognized city school districts in the state.

Q Well, because of the fact that this Princeton District was thrown together against the wishes of the people and is comprised of these seven or eight different political subdivisions which you have described, has the existence of these political subdivision lines posed any obstacle for you in the development of this program which you described? A No. I don't think they have presented any obstacle. They have to be worked with and I would say actually I think our program has been helped as a result of the healthy kind of competition that has existed among and between the various components of the Princeton School District.

We have many instances of the City of Sharonville or the Village of Glendale or some of the other areas of giving encouragement and awards and recognition and pushing their youngsters to try to excel. It is kind of a healthy competition that we had. I would say that I think that as a result of these various subdivisions we have been strengthened and [R-18] we try to use all of them to the best advantage too and get them involved and as a result of getting them involved I don't see that it has been any handicap whatsoever and I think it has been a good thing for us.

Q During the growth of the Princeton School District, which you have described, I believe there was a school district directly to the south by the name of Lincoln Heights. Would you please describe this school district? A Yes, to the south was the City of Lincoln Heights with a population of, I believe, around nine to ten thousand, all black, I believe. One of the few all-black cities in America, and an extremely poor area from the standpoint of economics. The city, I believe there is approximately 40 percent of the population on welfare. The city is made up of a number of apartment houses, small apartment houses, lots of old houses. It covers about eight-tenths of a square mile. It is a crime center in the northern part of Cincinnati. People for years have avoided the Lincoln Heights community. White people would not go there. In fact there are not even any roads running through, main roads, running through the main part of Lincoln Heights. They go around Lincoln Heights. It has, I said, a very high crime rate. Very [R-19] depressing atmosphere about the city in every respect.

Q Is this a black city of Lincoln Heights, school district of Lincoln Heights, is it surrounded on all sides by

white or predominantly white school districts? A Yes. The three contiguous districts were mostly white and wealthy districts because they had industrial wealth. Well, Wyoming didn't have so much industrial wealth, but this is a center with a great many well-to-do people. The other communities have industrial wealth and basically white communities completely surrounded.

Q What effect did this situation which you described have on the educational system and the students in the Lincoln Heights School District? A Well, of course the educational problem reflected the economics of the situation as well as the discouragement of the situation.

They had a very—a staff that was not very well prepared. They had many temporary certificates among the teachers on their staff. They had a program that didn't even meet minimum state standards.

They had very few activities. Their buildings were run down. The educational conditions in [R-20] that City of Lincoln Heights were extremely poor, I would say.

Q What effect did this condition have on the children themselves and their outlook and motivation? A Well, they had a very high dropout rate, of course. This would come about. I know the children, from talking with some of them, looked upon the outside world as being an outside world. They were completely shut in and surrounded by forces that they couldn't deal with. They had to go outside for everything. Any time they would get a job they had to go to the outside. There was really nothing inside of Lincoln Heights for them and their educational system reflected that in every way.

Q In early 1970 what action was taken by the State Board of Education in Ohio to remedy this situation? A

Well, the State Board of Education after several inspections of the school, of the Lincoln Heights School, revoked the charter of the Lincoln Heights School and transferred the entire Lincoln Heights District into or merged it with the Princeton School District.

Q Did the patrons and citizens of your school district, Princeton, did they have a referendum or any say-so or any voice in the merger of Lincoln Heights and [R-21] Princeton. A No. The people of our district had no choice whatsoever. This was done entirely by the State Board of Education and the people of Princeton had no say in it, no voice. Nothing they could say about it, or neither did the people of Lincoln Heights have any say in it.

Q Can you describe for us the general feeling in your community and among the patrons of the Princeton System when this announcement was made by the State Board? A Well, it was one of, I think, great frustration, anger, one of excitement, one of running almost everywhere trying to find out what had happened to their school and why this had happened. One of the great fears here was all the criminals from Lincoln Heights, I heard it several times, were going to take over the Princeton Schools. There were a few leaders that came to the forefront, called mass meetings. We had three or four in our high school auditorium with 12 or 1,300 people present. The entire auditorium packed.

It was one of excitement, threats, and all sorts of things.

Q Did you personally have threats on your life and family? [R-22] A Yes. We had telephone calls and they had to guard several of our, mine and several other homes, some of the Board of Education and others as a

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result of the transfer even though the State Board did the transfer of course the local authority are the ones that live there and the ones who have to face the situation. We had several threats. And threats more at the property, probably, than my life, but I did have calls and threats on my life too.

Q Would you say that when this was ordered by the State Board that you at this time had public support in your community? A Just the opposite. I would say in the Princeton School District there was about as far from public support as you could imagine.

We even had, as a result of this, I think a situation even of the students at Princeton High School outside, but also in the school, there wasn't support for it either. About 175 black students and about 40 black parents had a sit-in in the high school. This inflamed the white population still more.

And the situation in the high school of course brought some demands on us from the black students, but a part of it was a result, and they said afterward, [R-23] it was a result of the fear of the blacks who already lived in the Princeton District, a fear of the lower class blacks from Lincoln Heights coming into the district. And so it was against both, really. So we had many things of this kind too numerous to mention, I think.

Q When the State Board order was given, Dr. Lucas, what steps were taken by you and your staff and your board of education immediately? A Well, the first step, the day the State Board ordered the merger, the first step we took, we called a board meeting for that evening for the announcement that came back. Of course news hit the wire about, I think, three o'clock in the afternoon and we

knew the board was meeting. We had heard that things like this might happen and our board met that night and passed the following resolution, if I may read it.

Q Yes, sir. A I would just read the resolution that they passed. This was the first action we took. The resolution read as follows: "Inasmuch as the State Board of Education transferred Lincoln Heights School District to the Princeton District the Princeton Board of Education in special session on Monday evening, [R-24] February 9 passed the following resolution:

"Whereas the State Board of Education has of this date directed the Lincoln Heights school system to be made a part of the Princeton School District, therefore be it resolved that we accept the challenge of this responsibility and that the Lincoln Heights school community be brought into full membership in the Princeton School District, and be it further resolved that every effort be made to move ahead immediately to insure that all children of the extended district be afforded the best educational opportunity available, and be it further resolved that Dr. Robert E. Lucas and his staff be directed to utilize all resources and talents to provide for all children of the enlarged school district the same high educational opportunities Princeton children have enjoyed since the inception of the district."

And then they issued a news release to the community with the part of this resolution in it, but the news, this is the basic part of the news release, "Whereas the State Board of Education has revoked the charter of the Lincoln Heights School District and whereas the State Board of Education has directed the City of Lincoln Heights be made a part of Princeton School District, [R-25] now, therefore be it resolved by the Princeton Board of Education on behalf of the district and the people of Lincoln

Heights be and they are hereby welcomed to the Princeton City School District, and be it further resolved that every effort be made to insure that the children of the Lincoln Heights be afforded the best educational opportunity available so that in the shortest possible time they may truly become an integral part of the Princeton community."

This action was taken and given full notice and was sent also to each home in the Princeton School District in a letter to each home in the Princeton School District.

Q After these initial steps what further efforts did you and your staff make to bring about this merger in as smooth a manner as possible? A The first thing I did to follow up the board's resolution was appoint one of our school principals, a black principal of one of our schools, and Mr. Holloway, who was the Superintendent of the Lincoln Heights School District, appointed them to serve as coordinators of the transfer.

The second thing we did was immediately set up an advisory council, advisory committee to the [R-26] Superintendent.

Now, we appointed on that committee, asked to serve on that committee, the five members of the Lincoln Heights Board of Education, and then we picked two members from, or two persons from each of the neighborhoods in the Princeton School District.

We tried to pick on that advisory membership people who had opposed the transfer more than any others, and we had on that advisory committee a number of black people, a number of people who were white, but just very, very anti-black, and we had quite an exciting time as we brought together this kind of advisory committee.

In fact when we got together they had the job of hammering out plans and details for the merger. And it was

really just hammering it out because the first thing they did, they sat around for about three meetings and yelled and screamed at each other and no one seemed to get down to business until four or five or the sixth one where someone said, you know, what we are here for is to try to educate our children, why don't we stop fighting amongst ourselves and get busy with that job. From that time on we have been meeting ever since now this summer and this fall [R-27] will be once a month, but they have worked out and they worked out merger plans. They worked out a whole series of moves that would make the merger possible and make it operate smoothly.

Q What about—what steps were taken to bring the students of these two districts together? A Well, immediately there was a number of things that we did. We had students serve on—I didn't mention this. We had students serve on this advisory committee also.

Q Let me interrupt you. At the time of this merger that was ordered, I believe all of the extracurricular activities and the elections and cheerleaders and all that for each of these two districts had already been picked, had they not? A Yes. They were all picked and all set. Of course one of the things you had to do, you had two sets of everything and so what we had to do was get the students of the two, especially the high schools, together immediately because the high school were there seems to be the most concern, seemed to be the most concern, and what we did, we got the cheerleaders and got the student councils of the two schools together and let them go to work to try to hammer out and resolve [R-28] their difficulties.

And I have so much respect for these youngsters, they did. They negotiated. They argued and debated. We came

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up with some very, very high decisions, I think compromise decisions.

As a result I think we moved ahead very rapidly because at least students took a hold of it.

I will go ahead and say the students did serve on advisory councils.

We immediately set up a summer school camp for seventh and eighth grade, day camp, which all the students of the Lincoln Heights and the Princeton School District got together in a day camp. We set up a buddy system, black and white students in the Princeton District, white students were matched with black students in the Lincoln Heights District to get acquainted and to help them, help orient them to the school.

We set up a week-long camp for all fifth graders in the district. We developed a summer school program around, let's get the schools together. We involved students in all that planning.

I would have to say these students were 100 percent, their effort of trying to get along and [R-29] trying to work things out on a peaceful—in a peaceful way and did a wonderful job.

Q What about indoctrination of your staff, how long did you go about that? A As far as the staff is concerned the first thing I did with the staff, and that includes the teaching and administrative and operational staff, I especially called teachers together first and laid it on the line. I just said we are going to desegregate and integrate the schools and we want you to know it. This is a direction of the Board of Education. This is a direction of the Superintendent and if you don't want to go in that direction the thing for you to do is hunt for a job some place else and not fool around with it because we are going to go this way.

And I think they were, out of the 600, little over 600 professional staff members, I think actually there were three who left.

The staff immediately, some of them immediately volunteered to go into the Lincoln Heights—white staff volunteered to go into the Lincoln Heights community that at the time was all black to assist and get acquainted with the students and to acquaint them with our school system and to work with the youngsters.

[R-30] Our athletic and our music and many other activities, coaches, went immediately into Lincoln Heights.

Then we set up in-service workshops for the staff because all the staff members, where you put black and white together, must have in-service work where they haven't worked across racial lines before. Some needed to know how to deal with various kinds of language problems, reading problems, welfare cases, students with disgruntled attitudes of various kinds and put them together. So we have a very intensive—and we are still having a very intensive in-service program.

We received a Title IV grant of a little less than $100,000. We presently had four persons working full time with the integration problem in service of staff on the integration progress.

We had to do the same thing with bus drivers and custodians and others. We had the operational staff, had to have in-service programs with them and are still carrying that on.

Our staff really went to work. We had some counselors and we had a few more pair of professionals that we had and desegregated the staffs in all of our [R-31] schools so that we had black and white staff in all the schools where we didn't have that before.

And they got to work on curriculum and other things. Many things the staff did.

Q How about the other elements of the community? What kind of indoctrination did you do here? A Well, the community is very important. It was easy to put the children together.

The first thing we did, I mentioned earlier, we sent a fact sheet to every home to try to allay fears because the community of the—the community first was concerned about the security of their kids. Second they were scared to death about the quality of instruction in the program because Princeton students for years had been quite successful, and they didn't expect the quality of instruction to go down. We had to give them assurance that it would not go down.

And so we gave those assurances. We held, immediately went with the board and the Superintendent immediately went to a series of open meetings around the district. We invited anybody to come ask any question they would like to ask of us. Of course these were very, very beneficial. We held in each of our districts, and [R-32] we have been doing this for years, but we continued it, what we call the Superintendent's breakfast in which we invite everybody to come and eat breakfast with the Superintendent, ask him any kind of question you could ask. We had well up in the thousands that last year because of the great interest that came to these breakfasts.

We invited all the—you see at the present time we have now three cities and three villages and then the three counties. We invited the officials into a meeting where we talked with them and met regularly with the officials, mayors and councils.

We had the industrial, group of industrial advisors,

major industries and businesses of the community together and worked with them.

We have community councils in each of our elementary communities now that developed as a result of the interest here.

Our PTA council had been meeting with the President of the PTA of the district for a number of years, but the PTA council of the district immediately got together and extended a cordial invitation to the Lincoln Heights PTA and their officers to become members. [R-33] They had teas and coffee clutches and a lot of things the PTA did.

We established a hotline telephone for anyone who would like to call for information. We set up a speakers' bureau, people who could speak and talk about the issue.

We called in all the ministers of the district and sat down with them and said, "Now, look, you have been talking and preaching for a long time and now it is time for you to practice this old thing about the fatherhood of God and brotherhood of man and you have got a chance to do something. Get to work on it." Not all of the ministers completely agreed. Some of them I went to personally and talked with them personally. We got them at least not to oppose anything that had been done.

We had an academic and arts festival. Well, that was last year I think we had 8,000 at one and 10,000 people at another. That centered around the integration, integration process, showing what kids can do in the arts, what kids can do in academic things. This is the type of thing. All types of programs.

Q What role did the media play in it? [R-34]
A Well, in general the City of Cincinnati news media there played a rather important role in that they supported and gave us good notice. There was one local paper, the

editor being ultra-conservative, kept us on our toes all the time and looked for things that we were doing wrong and stayed pretty close to us. We had stayed pretty close to him too. So it was—we have tried to keep him pretty well informed. He has tried to keep us pretty well informed how he felt about things, but basically they have been good.

Q Well, what has been the result, Dr. Lucas, of this merger of the all-black Lincoln Heights District with your 90 percent white Princeton District? A Well, I would say the result has been the most excitement in education I have ever seen.

We have more people excited and concerned. Once you get concerned you get involved. We have had more involvement and more excitement.

I think also, as I would have to say, the result, I cannot see, in all of this I cannot see but what our basic programs of reading and math, and none of our test scores show that these have been hurt at all. Our basic program has gone along. The whites have done, the white people have done, students have done as well as [R-35] they have ever done before. The black students, I think we can show, are doing better than they have ever done before. I know we have had a much richer human relations program, better human understanding, more cooperation and more helpful conditions, I think in fact than—some of them are talking about the American dream come true for them.

From the standpoint of the staff I think it has been a very stimulating thing. We are now doing a lot more team teaching. We are doing a lot more individualized instruction. We have done a lot to, I guess it is challenge the individual teacher to be a little better than she has been before. Many of the scars are in the process of, I think, healing some of the earlier statements and so forth. It has been a major

effort, I would say, on the part of everyone that has made this possible.

Of course one other—one result of the merger we have had is the finest athletic teams we ever had. We won everything this last year. So that was another one of the results of the merger.

Q Now, what is the racial composition of the Princeton School District at the present time? A At the present time it is approximately [R-36] 30 percent black.

Q And what is the total enrollment of your system? A Approximately 11,000. It varies just a little from that because we are just starting and there is usually a few more that come in the second or third week of school, but at the present time it is right at 11,000.

Q And when the merger took place did you suffer a loss of white students from your Princeton District? A No. We haven't suffered any loss of white students. Oh, there are some moving in the community like that. They are moving in and out all the time. We have had maybe some moving out because of it. I know some white parents came and talked to me and moved in because of it. They wanted their children in a school where they would have the opportunity to go to school with people of a different race and a different economic background. So we have had—it has worked both ways. So I can't say that we have suffered any loss. Certainly our enrollment hasn't gone down.

Q You mentioned the human relations standpoint. [R-37] How has the racial interaction among the students been now in comparison when it was eight or ten percent black? A Well, when it was eight or ten percent black there was very little racial interaction. In fact in a large

school, a large high school, the 10 percent or 10 or 12 percent weren't noticed. They weren't in some classes, you know, and as a result there wasn't the racial mix that we have at the present time.

Now, with the 30 percent, approximately 30 percent mix, there is much more communication, much more opportunity for students to be in all things together. Much better chance for their debating the issues together. I would say it is improved greatly, the relationships of people, as a result of this.

Q Prior to the forced merger by the State Board, Dr. Lucas, were the school buildings of Princeton used for community activities such as Little League, community fund-raising efforts, and this sort of thing? Were the buildings used for only school activities in Princeton? A Our school buildings have always been open to the public. That is one of the ways you build [R-38] public support. We have had a policy of anyone living in the district could have free access to the buildings as long as they took care of them. So we have always had a lot of participation on the part of people from throughout the district.

Q Well, following the merger has this activity decreased any? A No. I would say it has increased. We have had a lot more involvement. We have started, I think, also because of this involvement of black and white and the segregation the need for basic courses for adults. I think there has been a lot more use of the community by adults. Last year there was more use than we have figures that show a tremendously lot more use of the building than last year by adults and also the Little Leagues and things of this kind. The use of the recreation facilities, the use that we open our libraries and our buildings at night, and we have had a great deal of use of this.

We have arts and many kinds of activities and related to the arts that are open at night.

I would say that our PTA and our community use of the buildings, the fact is we don't have enough facilities for them. They are always [R-39] clamoring for us. We are trying to schedule things. We just don't have enough facilities. It has been worse this last year than it ever has been.

Q Well, in your school district in Ohio, Dr. Lucas, to what extent is it necessary to go to the voters for approval of operational funds and capital outlay? A Well, the capital outlay funds we have to go to the voters for all of the capital outlay funds. And usually capital outlay funds are either bonds or building levy. We have gone with building levy which has been voted every five years, and if it is bonds you have to go to the people to vote bonds.

The operational money, approximately 90 percent of the money for operation of our schools have to come from the voters. You have to go to the voters and seek their approval for about, approximately in our district, approximately 90 percent of the funds.

Q Since this forced merger of Lincoln Heights and Princeton have you had occasion to ask the voters to approve a tax levy? A Yes. We had one last May 4th. We had an operational levy. It was a renewal of and an increase making a total of nine and twenty-four hundredths mils [R-40] or $9.24 per thousand. Three dollars and a half of that, or three and a half mils of that was an additional levy to meet the needs brought on as a result of this transfer and merger.

So we went last May, and with some fear wondering how people were going to react, that we put before the people.

Q What was the result? A The result was 57 percent

favorable vote, which was the highest percentage of vote for it that we have had out of the last four operational levies. So we didn't lose any. We gained, in fact, in terms of the support.

Q Was it approved by both the blacks of Lincoln Heights and the whites of Princeton? A Yes. We had in the white communities approximately the same, practically the same vote in all the communities. Some communities support you better than others and always do. So we had approximately the same vote in the white communities that we had been getting, which was just a good vote, over 50 percent, and then the black communities supported a little better than that, which made the average of 57 percent.

[R-41] * * *

Cross-Examination

By Mr. Lucas:

Q First of all, we are not related, are we? A No, we are not related.

Q Have there been some efforts to have a merger of the Lincoln Heights District with more than just the Princeton District? Were there some efforts by the State Board to consider two or three districts in a merger prior to this time? A Yes. The State Board under the law is supposed to contact the contiguous districts in the case of a revocation of charter and the contacts of the three Lockland, Wyoming, and Princeton, and after consideration the State Board said that because of Princeton's size and staff and the ability to handle the merger they said that [R-42] we are going to transfer them to Princeton, yes.

Q You had experience with mergers? A I think we have had a lot of experience with mergers and that may be part of it, I don't know.

Q Actually one of the elements in the consideration of the State Board of Education was the request by the Department of Justice that there be steps taken by the State Board with respect to the segregated schools in Lincoln Heights, isn't that correct? A That's right, sir. Yes, sir.

Q Do you know when that effort was made by the Department of Justice, Civil Rights Division, I believe? A I know that there were persons from the Department of Justice in the Lincoln Heights area for a year or two before the transfer. I would say year and a half, I think, anyway.

Q There was no voluntary action taking place in the earlier consideration, was only after the State Board acted that the merger was accomplished, is that correct? A That is exactly right.

Q You mentioned that the students got together and solved the problems of student council and cheerleaders [R-43] and so forth. Would you give us some illustration of how that was solved by the students themselves? A Well, I guess from the standpoint of the cheerleaders they set up a system among themselves whereby they would have some faculty advisors and a certain number of, I forgot the exact number of students, would pick the cheerleaders after they had been selected, after they had been nominated. And they were nominated across racial lines. So they would have the same number from each race. Then they were picked, the staff and students, I mean it was a kind of a compromise thing, they came up with this and

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they put some safeguards so there would be racial balance as well as some high-quality cheerleaders.

I think that was one.

I mean the student newspaper, the staffs got together and decided who was going to be editor of that, who was going to be editor of it and worked that out themselves along with their advisors. It seemed to be no big problem with that.

There were a number of other organizations of this kind. This is the way they did it. Sat down together. Sat around. Sometimes they would get mad and after they got mad they got in a good humor. So it was [R-44] that sort of thing.

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Cross Examination

By Mr. Gravatt:

Q Dr. Lucas, when did the Richmond School Board get in touch with you? A Oh, I think the first time I heard of this was last spring, in the spring some time, when I heard of this case.

Q Have they ever enlisted your assistance and your advice and guidance in connection with the problems that they have had in the integration of the City schools? A No. I haven't talked to the Richmond School Board.

Q Do you think that you could have accomplished what you have accomplished in this district if you had felt that you could not succeed in educating these Negro children that came into your district? A Well, I am no expert on the Richmond schools. I know about the Princeton schools. I don't know enough about the Richmond schools to say what I would accomplish or what I couldn't accomplish.

[R-45] Q I asked you about your own school district. Do you think you could have accomplished what you have done, what you have just described, unless you felt that you could succeed in it? A If I could accomplish—state that question again.

Q Well, I understand that you have had a very successful merger of these school districts? A That's right.

Q Do you think this could have been done unless you had been confident that you could do it and determined to accomplish it? A I think that confidence in one's self, and I have that confidence in myself, that I think that this could be accomplished and I could accomplish it under the same circumstances along with a lot of help, yes.

Q And you have utilized all kinds of innovative methods in teaching in order to bring these black children into better educational equality with the children that have been in your district before? A Now, I wouldn't say that we used all kinds of innovative methods in teaching. Good solid teaching of reading is good solid teaching of reading and that is [R-46] hard work. That is the purpose. So we have used good methods. I don't say that a lot of innovative methods. We have done a number of things, whatever was necessary. I found that our teachers have worked hard to try to meet the individual needs of children, yes.

Q Under your leadership? A Yes, that's right.

Q And you have had team teaching and you have had individual effort with children who had learning problems? A Yes.

Mr. Gravatt: That is all.

The Court: Mr. McIlwaine?

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Cross Examination

By Mr. McIlwaine:

Q Dr. Lucas, did I understand Princeton District was originally formed in 1955? A That's right, sir.

Q And it was formed of some eight districts that existed before that? A That's right.

Q Can you tell me approximately how many school districts existed in Ohio as a total in 1955? A Oh, I don't know exactly. I would guess [R-47] in the neighborhood of 1,100.

Q 1,100? A I would guess that. I think that is true.

Q And how were these districts formed? A How were they formed?

Q Yes. A Well, there are many ways in Ohio a district is formed. I suppose 1,100 had been formed as a result of mergers going back to county consolidations some years before because I know there has been a history in Ohio of the districts merging down through, oh, several years. So I suppose they were formed by the county boards of education generally. Usually with the help and support of the State Board of Education, yes.

Q And how were most of the districts governed? By boards of education? A Yes, five-member boards of education elected by the people.

Q And do these boards have the tax-levying authority for the district? A These boards have to go to the people to get the vote of the people for any levies that they would have above a 10-mil limitation.

Q I see. They have a limit to which they can [R-48]

tax themselves and beyond that they have to go to the people? A That's right.

Now, under the law there is what they call a 10-mil limitation in Ohio and that 10 mils is divided four ways. It is divided into some of the 10 mils given to the city, some to the county and some to the township and some to the school district.

Now, that is all that is just given there. Anything else beyond that you have to go to the people and vote. And in our case it is only $4.63 a thousand or four and sixty-three hundredths mils that we have inside that limitation. The rest has to be voted.

Q And the board sets it and then asks the people to ratify it? A Yes. The board passes a resolution putting it on the ballot for the people to ratify, that's right. They can't set it. The people have to vote it.

Q But they set what the people vote? A That's right.

Q They propose a tax limit? A This is right.

Q And submit it to the district and the people in the district vote on it? [R-49] A That's right.

Q Now, this is true as to operating expenses and also as to capital expenses? A That's right.

Q Now, in the consolidation to the Lincoln Heights did I understand you to say that at the time of the consolidation Lincoln Heights was an all-Negro district? A That's right. Entirely black. That's right.

Q Was it a city or a county? A It is a city. It is a City of Lincoln Heights, that's right.

Q And it was in its own separate school district? A Had its own school district, that's right, own separate school district.

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Q And at the time of the merger the Princeton District was some seven or eight percent Negro? A No. At the time of the merger it was approximately—Princeton was approximately 12 percent in the very beginning. It was about seven or eight going back 15 or 16 years. We had about seven or eight [R-50] percent black, but at the time of the merger in February of 1970 the Princeton School District was about 12 percent.

Q And what was the size of the composite district after the State Board of Education merged it? A You mean the square miles?

Q Yes, sir. A Oh, it is between 36 and 37 square miles.

Q Between 36 and 37 square miles. And how many schools were in Lincoln Heights? A There is two buildings in Lincoln Heights and they also had some temporary structures connected with that. But there is an elementary building and a high school building.

Q Just an elementary and high school? A That's right.

Q Did not have a middle school or junior high school? A No junior high. The seventh grade and seventh and eighth grade—well, some of them in one and some in another. They were shifted. The fact is they were moving around some, had a temporary cabin out back of the building too. So they were moving.

Q Now, is the elementary school still in [R-51] existence? A The elementary school, part of it is still in existence because it is a part of the phase-in process that we are going through.

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Q Is it being utilized as an elementary school? A Yes.

Q For the district? A Yes. It is being used as an elementa school.

Q What is the racial composition of that school? A Sir, we are in the process right now, as we have said, since we are under no court order to do anything suddenly we are in the process of—we have moved out of—completely integrated this year all the youngsters from the sixth grade on up. But we haven't gotten all the elementary. Now, that is the next phase that comes in another year.

Q I see. A That's right.

Q So that at the moment the composition of the elementary school in Lincoln Heights is the same as it was when the merger took place a year ago? [R-52] A That's right. We just had one, but our plans are to make that move.

Q So at the moment it is still all Negro, the elementary? A Up through the five.

Q Now, what has been done with the high school in Lincoln Heights? A The high school in Lincoln Heights has been put right in the Princeton High School. It is completely merged with the Princeton High School and Junior High is completely merged with the Princeton Junior High School. In sixth grade, and if we had room in the building, the fifth would be merged with an intermediate school this year.

Q Does the high school in Lincoln Heights still teach the seventh through twelfth? A We are using the high school building in Lincoln Heights presently as some labora-

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tories where we have mixed white students. We have taken in mixed white and black students into that high school building in the mixed ratio the same as, approximately 30 to 35 percent black. We are taking a part of the ninth grade in the morning and part of the ninth grade in the afternoon that goes into that high school building in Lincoln Heights, [R-53] both black and white students, for their laboratory courses because we don't have room at the present time. You see, you can't, in a year's time, build all the buildings you want in a year's time. So you have got to utilize what facilities you have.

So we are taking white students and black students together. We are hauling to the junior school and bringing them, since the laboratories have been established there, we have completely remodeled the building. We have taken both black and white into that building for their lab classes, yes.

Q Where do they go for the remainder? A To the junior high school.

Q The high school students go to the junior high school? A No. These are ninth graders.

Q Ninth graders. What about ten, eleven, twelve? A Ten, eleven, twelve go to the Princeton High School.

Q Princeton High School? A Ten, eleven, twelve high school, yes.

Q Is that the high school for the district? A That's right.

[R-54] Q And all of the children? A That's right.

Q Go there. And the Negro children in the former Lincoln Heights are transported? A All are transported there, that's right.

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Q Transported to that school? A That's right.

Q Now, do you provide transportation in the district— A Yes.

Q —for children? A Yes, we do. We have about 80 school buses.

Q About 80 school buses. And what is the running time, Doctor, average running time for a bus trip in this 36 square miles, did you say? A I would say it averages about 30 minutes per trip.

Q All right.
Thank you, Doctor.
I have no further questions.

The Court: Mr. Lacy?

Cross Examination

By Mr. Lacy:

Q I just have a couple questions. Back in [R-55] 1955 when the eight school districts merged together do you know the approximate size of each of those eight districts? A Know the approximate sizes of student enrollment, is that what you mean?

Q Yes, sir. A Well, some of them were fairly small. For example, the wealthiest one, Evandale, had all the wealth, only 100 students. They had about $180,000 behind each child in taxable property. So that was a small one. Then some of the others ran 500 or better. So there was anywhere from 100 students to 600, I guess, as the highest.

Q So the largest was around 600? A Yes. So we only had at that time, you see, only a total of a little over 2,000 students in the total district when it was first put together.

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Q What was the size of the Princeton City School District after the merger in 1970? A What was the size?

Q Yes, sir. Of the consolidated Princeton City School District? A In square miles?

Q No, sir. [R-56] A In population?

Q Student population. A Student population was about 11,000.

Q That was in 1970? A 1970 after we put together. Well, a little less than that last year, but our enrollment last year ran 10,000, I think, at the end of last year was 10,500 and something. 10,500 something. We have 11,000 this year. So we have gone up this year, it looks like, we are going up three or four hundred, around 400 this year.

Q In Ohio, Doctor, do the school district lines necessarily have any relationship to the political subdivision lines? A No. No relationship whatsoever in Ohio. We cut across all kinds of lines.

Mr. Lacy: I have no further questions.

The Court: Mr. Gray?
Excuse me, Mr. Byrne.

Mr. Byrne: No, sir.

The Court: Mr. Gray?

Cross Examination

By Mr. Gray:

Q Dr. Lucas, have you made any studies as [R-57] to the optimum size of school districts? A No. I haven't made any studies of the optimum size of school districts.

Q Let me review a statement which was made by Dr.

Neal Tracy, Dr. Tracy testified on behalf of the School Board of Richmond earlier in this case made the statement, I am going to read you a statement that was made in a case involving annexation proceedings between the City of Richmond and Chesterfield County.

"Expert opinion on operational effectiveness."

Mr. O'Brion: If Your Honor please, I object to this line of testimony. I don't believe there is any mention of optimum size or any expertise that was gone over on direct by this witness.

The Court: What is the purpose there, Mr. Gray? He hasn't qualified as an expert.

Mr. Gray: I just want to ask him, sir, if he agrees to the statement as to what the optimum size would be, as to whether or not the size of his district would be—would influence the manner in which it was put together.

The Court: Objection is overruled.

By Mr. Gray:

[R-58] Q I will start again, Doctor. "Expert opinion on operational effectiveness and efficiency of school district places the minimum size at enrollment of 10,000. Research indicates that this enrollment base, if properly organized, will permit the operation of a comprehensive educational program on each level. The efficiency of business operation may continue to increase slowly as population increases, but tends to level off at around 20 to 25,000 enrollment."

Now, that is the end of the quotation. Would you agree with that, sir? A Now, there has been so much argument as to what is the right size for a school district, and I would say from my agreement or disagreement I think the size

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isn't the important factor at all. It is what you do with kids and how you organize to get the level and the services of youngsters, isn't a matter of whether you have 10,000 or 20,000 or 100,000. It is whether you organize yourself and organize your school district in such a way as you get to the level and that you get the services to the youngsters. So that is the way I feel about it.

Q Do you agree, sir, that there is a [R-59] minimum size below which a district cannot afford to provide good educational facilities or complete educational facilities? A Well, there may be some. For example, a high school that is so small it can't provide a broad base of courses would be one of the problems of a district that is too small. I think this could be a problem, yes.

Q Now, I believe you have already been asked about the eight districts that were put together to form the Lincoln District or Princeton District, excuse me, back in '55 and said the largest was around 600 students, is that correct? A Yes. The largest was about 600, yes.

Q Would you agree that a total of 600 enrollment for a district is too small to provide the broad range of programs that should be provided? A Now, while I wasn't at Princeton to put them together, that was one of the arguments for putting them together, that the Hamilton County Board of Education used. That in a district where they had only 600 total enrollment this was one of the arguments they used that the high schools were too small, and there were two high schools there in the district that had these [R-60] enrollments. And I say that was one of the arguments, one of the basic arguments. But there were a number of arguments. Economic factors was another one of the major arguments in the Princeton School District

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for putting it together, because you had the great disparity. You had one of the original districts has less than 3,000 or approximately 3,000 in taxable property behind each child and another one of the districts had 180,000 behind each child.

Q This is a very important consideration in determining how to structure a school district, isn't it, the amount of taxable wealth? A Surely.

Q In comparative areas. A Taxable wealth, ability to support education. There are several factors involved in it. There is no one factor.

Q And is it true, sir, that the consolidated district has more taxable wealth per child than Cincinnati? A Yes. This is true.

Q And is it true that it had considerable more wealth per child than Lincoln Heights? A No question about that.

[R-61] Q Can you tell us what the two figures were? A Yes. Princeton School District had about 32,000 behind each child and Lincoln Heights District had about 7,600 behind each child at the time of the transfer.

Q So that obviously the Princeton School District would be able to provide a far better educational program for its students than you would in the Lincoln Heights District? A Of course there was equalization funds in Ohio also that we want to point out that Lincoln Heights got about, let's see, I think at the time 65 percent or 70 percent of its funds, I am not sure about that figure, of its operating funds from the state while in Princeton we only got 15 percent, around 15, got our operational funds from

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the state. So there is an equalization formula in Ohio that tends to balance this.

Q It tends to balance, but it does not balance? A Not entirely, no.

Q Now, sir, you indicated that in Lincoln Heights they were unable to provide even the minimum [R-62] educational requirements which the State Board required, is that right? A Yes. They didn't provide, yes.

Q And this was the basis on which the State Board revoked the charter? A Yes.

Q How many ways are there that school districts can be formed or consolidated in Ohio? A Oh, gee, I don't know exactly how many ways. One, of course, the state can revoke charters like this one. One, the people can petition in Ohio to have their districts joined together.

Another, in Ohio, and under the county systems where we have county boards of education, the local boards of education, county board, can put districts together. There is at least that. And then the people have a time against—

Q People in one district in part of a district can ask to be transferred to another district, about five different ways? A Yes, sir.

Q All of them described by the legislature of Ohio? A That's right.

[R-63] Q So it is treated in Ohio as a legislative matter as to how this is done? A Yes.

Q I believe you said that in Lincoln Heights K through six is still a neighborhood school? A K through five.

Q K through five is still a neighborhood school.

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Now, I didn't quite understand the use that you ar making of the Lincoln Heights facilities that did exi there. Am I correct that the only—you have got K throug five in what was the elementary school that is still there A That's right.

Q And the ninth grade is attending, or part of th ninth grade is attending what was the high school in Lincol Heights? A No. Let me explain that again.

The ten, eleven, and twelve that was originally in Lincol Heights, now, are all completely integrated in the Prince ton High School, that is Princeton High School building

Q Yes, sir. A Then we have a junior high school, [R-64] seven, eight, ninth, junior high school.

Now, we take all of the youngsters from the entire dis trict and bring them to that junior high school that is i seven, eight, nine. We bring them to that junior hig school.

Q Where is that? A Well, right across from the hig school. Right in the heart of the Princeton School District

Q In Princeton? A Right. Right in the heart of th Princeton School District. We bring them there in the morn ing and there they go on to their home rooms and from there then they have a class assignment so that the ninth grade half a day half of them go into the Lincoln Height building for their lab and for their science and physica education and industrial arts and home ec classes.

Then at noon they switch.

Q The other half? A The other half goes in there i the afternoon.

So we are making use of that building that way this yea because we haven't been able to [R-65] build enough room in the central building for them at this time.

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Q You are planning to abandon the old Lincoln Heights School? A I don't think we will abandon that Lincoln Heights School. No, I think that will be used as a community center and adult education and will probably continue to use it this way for a number of years. It is going to take a while to get something built.

Q But at the present time the only use it is being made of is for the ninth grade? A But it is full. It is 450 of them to 500, I guess about 500 of them. So it is full. It has full use, I mean.

Q Now, in Ohio when a school district is formed that has a school board or, what do you call it there, a school board? A Yes, school board. That's right.

Q That serves that whole district? A That's right.

Q And the district may cut across county lines or townships and this sort of thing? A Right.

[R-66] Q But that area, whatever it is, becomes a taxing district for that one school board? A For school purposes.

Q Right. A That's right. Regardless of how many. Regardless of how many municipal areas or how many areas it cuts across. That becomes the taxing area for that school board.

Q So that one body makes a determination of what tax shall be levied and what tax shall be proposed for the people to vote on? A Yes, the school board.

Q And the people vote as a unit? A That's right.

Q Not a question of the people in one township voting for it or against it. They vote as one individual unit? A Yes. They vote as a unit, yes.

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Q It is not a question of the council of each one of these localities having to approve what is done by the school board? A No.

Q All done by one school board? A It is done by the school board, yes.

[R-67] Q Would you think, Doctor, if each township had to approve it that the townships might prove to be an obstacle? A I don't know. I have never worked under that system. I have always worked in Ohio and I don't know the problems that are connected with that.

Q In the elementary school, Lincoln Heights, you indicated that you found since the merger that students are doing, your white students are doing as well and black students are doing better. Are the black students in the elementary schools in Lincoln Heights also doing better? A Well, with only a year I can't say that they have done too much better. We have put a lot of materials in there and it is going to take time. It takes lots of time. I think we are going to have to put them together with the other white students too before we will have the full potential development that we should have.

Q So that in a year you can see that they are doing better in the mixed school but you can't judge what happened? A Well, I am not saying that. I am saying that I can't see that they have done too much better [R-68] because we have given tests and they are very much the same as they were last year.

Q I see. A We put in a number of additional aids, library aids, books and so forth that they perhaps have not had time to show up yet, too.

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Q What was the reason given to the people for the merger of the Princeton and Lincoln Heights District? A What was the reason given by whom?

Q By the State Board. A The State Board of Education said very pointedly in their giving out information that due to the fact that it was impossible for Lincoln Heights to have first-quality education program in the situation where they were that they had—they were transferring them to the Princeton School District where quality education would be available and is available and would be available so that they could have quality educational opportunities with other children in the state.

Q And that is the real reason it was done. In Lincoln Heights they could not provide good education? A I think that along with the fact it was an all-black community and the fact that the Justice Department [R-69] and others were pushing in regard to the fact that—got too hairy, all black, they want to integrate, it was another reason.

Q Did you advocate this merger before the Justice Department did? A No, I didn't advocate the merger.

Q Did you foresee the educational advantages before the Justice Department urged the merger? A Yes, I saw the advantages and I sat there as that neighboring Superintendent for 15 years wishing I could do something to help the youngsters in the Lincoln Heights community and help the youngsters in my own community, because I think the white youngsters are also handicapped because they haven't had a chance to work with black youngsters, but I did not do anything with it and simply for this reason. Superintendents in working in a condition under circumstances like that is not in a position to do anything about

it. He wouldn't be around long enough if he got up and proposed too many things too fast, you know. He needs the support of the State Board of Education and others to do it.

[R-70] * * *

Redirect Examination

By Mr. O'Brion:

Q Mr. McIlwaine asked you about the times that students were travelling on buses in your district of 30 minutes. Is your district bisected by two interstate highways and are the distances travelled there as much as 10 miles? A Oh, yes, the distances travelled there is more than 10 miles for some of our youngsters and we have I-75 and I-71 coming in and then we have I-275 in our school district. So we have them travelling more than 10 miles but with the traffic why it runs half an hour, or that is about the average, I guess.

* * *

Recross Examination

By Mr. Lucas:

Q Is your district now presently crossing [R-71] more than one county line? A Yes. Three counties.

Q How far are you from the City of Cincinnati? A I guess from the southern part of our district into Cincinnati is about 12 miles, I believe, to downtown Cincinnati.

Q To the limits, to the border of Cincinnati city limits how far? A Well, to the border of the Cincinnati city limits there is along our border. There are at least two or three cities between us, Lochland and Reading and a part

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of Wyoming, a buffer between Cincinnati and the Princeton School District.

Q Your district boundary is how many miles from the city limits of Cincinnati, approximately? A Oh, I guess in some cases it would be approximately two miles.

Q All right.

So although it might involve your position as Superintendent in Princeton would you oppose consideration of a metropolitan desegregation plan involving Princeton and the City of Cincinnati as well as the districts in between? [R-72] A Well, there are several white, all-white districts in between. The fact is there are 24 school districts in Hamilton County and ours is one of the 24. It would be my opinion that including more than—that there will never be quality education for all the youngsters in the Hamilton County area until something is done on a much wider basis and my judgment doesn't amount to that too much and I wouldn't worry about it as far as my job is concerned. If it is right for kids, it is right.

* * *

Recross Examination

By Mr. McIlwaine:

Q Could you tell me, sir, how many pupils were in the Lincoln Heights District at the time of the merger? A Approximately 2,000, I have it, 1,900 and some. I think 1,970 or approximately 2,000.

Q And another 9,000 in the Princeton [R-73] District? A That's right.

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* * *

THOMAS C. LITTLE

was recalled as a witness and testified further on his oath as follows:

Direct Examination

By Mr. Little:

Q Dr. Little, I believe the only full day of testimony that you have missed was last Tuesday, is that not correct? A That is correct.

Q That is since this trial started? [R-74] A That is correct, sir.

Q Dr. Little, I simply want to direct your attention this morning to two specific items of evidence that came in during that one day that you were not present in court. Specifically it deals with the lottery conducted in Chesterfield County testified to by Mr. Fulghum involving the transportation of 57 black pupils from Grange Hall to Curtis School. Have you had a chance to look at the bus route that was introduced that day for getting those 57 students from Grange Hall to Curtis? A Yes, in general.

Q The testimony showed, sir, that the time for that trip would be approximately two hours 35 minutes. I would like you to make whatever comment you deem relevant to that testimony to which I just referred. A Well, I can understand it would take that amount of time to run that route as laid out. However, Mr. Little, I refer you to my original testimony in reference to this case. In discussing subdivision six we recommended—we stated that we treated it in this plan as we had treated all the others. However, [R-75] we would strongly urge that consideration be given

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treating it differently because of distances involved, for ıe thing, and maybe more importantly because most of ıe schools in that area were—

Q In that area? A I mean in subdivision six, were bstantially desegregated with a viable racial mix.

I would not recommend any such travel time as involved that. I think that other means can be devised that ould far outweigh any such travel as that. I still contend think with smaller buses and more direct routes that those ds can be transported in the 60 minute, plus 10, plus minus 10 of the 60-minute period however, if it is found ey cannot be there are a number of other alternatives at could be resorted to.

Q In zone six what are the three schools that give you e most concern? A Well, Grange Hall doesn't give me ncern in getting rid of the blacks in that because there a mix there of 33 percent black at Grange Hall at the esent time.

You have Curtis and Bensley that are practically all hite. We have the Matoaca Lab that is [R-76] principally l black. I don't know what the status of the Matoaca Lab I was not aware at that time that there would be an ef-rt to dump that or disclaim that from the county, frankly.

Q Drawing your attention to Matoaca Lab a minute. your opinion does, if that school ceased to be a county hool, would that render more difficult the desegregation, y, of Curtis which is now four percent black? A Yes. nd frankly, Mr. Little, I can see no more virtue in the ate operating through a state college an all-black school an I see in Chesterfield County operating an all-black hool.

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Q All right, sir.

Coming to the testimony that was given by Dr. Britton about the lottery to serve Varina and Varina Annex. The plan, I believe, called for the exchange of 125 whites to Whitcomb Court. Are you familiar with the exhibit, I believe Henrico Exhibit 33 which is just behind you to the left, sir, showing the orange and red bus routes which the testimony showed were devised by the transportation experts in Henrico County with the assistance and help of the State Board of Education staff? Have you made a study of that? [R-77] A Yes.

Q Do you suggest any possible alternative to the orange and red routes that were on Henrico County Exhibit 33, sir? And I now refer you to School Board Exhibit 96 which is the Henrico Exhibit 33 with one more line on it. Would you explain that, sir? A Well, here again, cross-examination, I feel that these kids can be transported in a time that was allotted if you don't run up to every door and blow your horn for the kids to get them on the bus.

I note in that that they have run up to many unsafe points to turn around and whatnot, that I could not recommend that as procedure.

There are—there is a very simple alternative to that.

[R-78] * * *

The Witness: At the present time this area here by the airport known as Lewis Gardens is being operated as a satellite zone from the Varina Elementary School. We have, in voting the number of youngsters, they got out of that area by lottery and we went in and did a count as of last September and found there were 127 youngsters living in this present satellite zone.

Now, there were nine kindergartens.

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By Mr. Little:

Q Whose satellite zone was that? A Varina satellite zone running up here.

Q Henrico County? A Henrico County zone running up here. These people being transported to Varina. We found nine kindergartens. 31 first graders.

Q Excuse me, sir.

Are you reading from 96-A? [R-79] A Yes.

Q All right, sir. A 29 second graders, 16 third graders, 21 fourth graders, and 21 fifth graders giving a total of 127.

There were 125 youngsters needed from Varina to be transported, to be exchanged to Whitcomb Court. It makes for a very simple matter to treat that island zone as an island zone for Whitcomb Court in running the distances and mileage.

Q Turning over to 96-A, would you review that, please, sir, page two of 96-A? A We find that the distance from Lewis Gardens Apartments to the Varina Elementary School is 6.3 miles or a 14-minute run from Lewis Gardens to Varina Annex, 7.2 miles or a 16-minute run.

But the distance from Lewis Gardens to Whitcomb Court Elementary School is 6.5 miles and a 13-mile limit.

The Court: 13 what? You mean 13 minute?

The Witness: 13 minutes, 6.5 miles and 13 minutes. If you look at this exhibit—

[R-80] By Mr. Little:

Q Now, referring to School Board Exhibit 96, right? A Yes, sir.

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Q Which is Henrico Exhibit 33 with only the purple line added? A And if you want to make the comparison of the bus runs rather than all of this, pick up all your kids and follow the blue line down the expressway to Whitcomb Court, would be a very simple matter to accomplish that.

* * *

Cross Examination

By Mr. Lucas:

Q As I understand your testimony, you could [R-81] take these 125 white children that are needed in order to desegregate the Whitcomb Court School from one particular apartment development? A Yes, sir.

Q Is that a public housing project? A I am not sure.

Q Is Whitcomb Court located adjacent to Public Housing Authority in the City of Richmond? A Yes.

Q Has it historically been a black school or white school? A Black.

* * *

By Mr. Gravatt:

[R-83] Q Well, when you refer to an island zone are you talking about taking all of the children in the island zone or are you just talking about just taking the black children from the island zone? A Talking about taking all the children from the island zone.

Q All of them? A Yes, sir.

Q You would select a zone because it had a majority black children in it? A I would try to get all black if possible, yes, sir.

Q I see.

And would you draw this zone that way in order to get black children into the school? A Yes, sir.

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Cross Examination

By Mr. McIlwaine:

Q Mr. Little, how do you define a satellite [R-84] zone? A Well, maybe I better redefine and call it an island zone or strip zone. It is rather difficult for me to straighten those terms out. I think I would call this an island zone or a, maybe a better name would be peninsula zone that we are speaking of here, sir.

Q But in your excerpt you call it a satellite zone, is that correct? A I believe we called it an island zone, sir.

Q Well, in Exhibit 96-A. A Satellite.

The Court: You intend for it to mean the same thing?

The Witness: Same thing. Satellite, island, if you want to get it more properly it might be a peninsula.

By Mr. McIlwaine:

Q All right.

Did you understand on the day you were not here to hear the testimony that this bus route was run with buses going up to the door of every child? A Well, I did not understand, but in looking at that I note any number of places that you go up for a [R-85] turnaround, and the State Department of Education help notwithstanding, you indicate that that is an unsafe turnaround and I really would question the sound judgment in even laying out of these routes, sir.

* * *

Q Well, it is only relevant to the situation that if you say that these times were laid out, because they have driven up to the door to pick up the children, now, if the testimony in this case was that the children are picked up at stops

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along the road and not at their doorsteps would you be able to dispute that statement? A No.

[R-88] * * *

Q Now, as with the case with subdivision six, and the particular instance, you would select a zone according, an island zone, according to the racial composition of the people who live in it for the purpose of transporting them to a particular school? A Mr. McIlwaine, I still think that I can do it in 55 minutes of running time and possibly go by Lewis Gardens in so doing because we had 14 minutes from Varina, from Lewis Gardens to Varina and 13 minutes from Lewis Gardens to Whitcomb Court. I would not do it with [R-89] two 66-passenger buses. I would use my smaller equipment in that and get more direct runs. I think it can be done, however. If it can't be done there are other alternatives that I would recommend that they resort to.

Q But this particular alternative involves using an island zone that is selected for the purpose of racial composition of the people who live in the zone? A This alternative is, yes, sir.

[R-101] * * *

Mr. Lucas: Plaintiffs' Exhibit 144-A through I, Your Honor, correspondence from the, furnished by the Office of the Attorney General earlier in which the Court has previously ruled. I would like to read certain portions from a number of those documents if I may. I will try to keep it as limited as possible.

[R-102] * * *

Mr. Lucas: Letter dated August 5, 1958, from the Office of the Attorney General to the Honorable J. Lindsay Al-

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ond, Jr., Governor of Virginia. The second paragraph, Your inquiry involves a consideration of the General Assembly of Virginia. At that session, the General Assembly, ecognizing that local school authorities would be faced with nprecedented obstacles if ordered to enroll white and egro children in the same public school, and being fearful at such enforced integration of the races would destroy e efficiency of the school and tend to disturb the peace nd tranquility of the locality in which the school was lo-ated, declared that the welfare of the citizens of the Com-onwealth, the preservation of the public school system, nd a continuance of universal public education, made it ecessary that there be uniformity of action throughout the ate in all instances where such enforced integration was reatened and impending.

"Accordingly, the General Assembly, invoking the police owers of the state and its constitutional [R-103] powers, nacted legislation providing that the Commonwealth of irginia assume direct responsibility for the control of any hool to which children of both races are assigned and nrolled by any school authorities acting voluntarily or nder compulsion of a court order."

It goes on with reference to a specific inquiry and quotes e language of 22-188.5 of the Code of Virginia provides part as follows, "The making of such an assignment and e enrollment of such child or children shall automatically vest the school authorities making the assignment of all rther authority, power and control over such public school nd such school is closed and is removed from the public hool system, and such authority shall be and is hereby sted in the Commonwealth of Virginia to be exercised the Governor of Virginia, in whom reposes the chief xecutive power of the state." And then it goes on with ference to the Pupil Placement Board.

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"The sole function of the Pupil Placement Board is to assign or place pupils and to determine school attendance districts for the public schools; that is, the Board shall determine what school a particular child is to attend, and upon making that determination, shall assign and direct the child to attend that school."

[R-104] Paragraph three, page three. "I am, therefore, of opinion that immediately the assignment or placement becomes final, and such action is communicated to the Division Superintendent and to the principal of the school, the pupil has been assigned and enrolled within the contemplation and meaning of 22-188.5 of the Code of Virginia, and if thereby the school becomes an integrated school it is automatically closed by operation of law and is removed from the public school system. It then becomes the duty of the Governor to assume control over the school, make every reasonable effort to reopen or reorganize the school, and return it to the public school system as soon as possible, provided its return can be accomplished without disturbing the peace and tranquility of the community and without enforced integration of the races therein."

144-D is a letter dated June 2, 1965, and is addressed to George Stephen Leonard, Attorney at Law, Washington, D. C. Dear Mr. Leonard: "I have—third paragraph of the letter, "I have serious doubt as to whether any locality would want to initiate proceedings itself to get under a court order. If a locality refuses to comply with the requirements of HEW and an independent [R-105] suit is brought against the locality, either by the Office of the Attorney General of the United States under Section IV of the Civil Rights Act or should be brought by parents of the individual children as has been the custom in the past, the locality may be better off in court than in complying with the regulations of HEW."

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Skipping a paragraph, "I might add that a good many of the localities have employed counsel from the City of Richmond who are familiar with previous litigation in this field."

A letter dated June 22, 1965, to Mr. Lester H. Jones, Division Superintendent-Elect, Tazewell County Schools, Tazewell, Virginia.

The second paragraph of the letter. "Upon investigation we find that Tazewell County is under the jurisdiction of the State Pupil Placement Board and, of course, the assignment of pupils will have to be made by that Board." That is June 22, 1965, Plaintiffs' Exhibit 144-C.

Plaintiffs' Exhibit 144-D is a letter dated May 9, 1966, to Mrs. Luba Bradwell, 8040 Merritt Street, Norfolk, Virginia. The second paragraph, "As I am sure you are now aware, tuition grants for the school [R-106] year 1965-1966 will not be paid by officials of the City of Norfolk, and such payments will be made on their behalf by the State Board of Education pursuant to the provisions of the Virginia tuition grant law governing such situations." A copy shown to Superintendent Lamberth. And I would direct the Court's attention to the testimony of the State Superintendent with respect to the minutes indicating that it would then be reimbursed from other school funds due the City of Norfolk.

A letter dated June 14, 1956, Plaintiffs' Exhibit 144-F to the Honorable Robert F. Baldwin, Jr., Norfolk, Virginia. The second paragraph, "You will recall that the State Pupil Placement Board was designed to remove the assigning powers from local boards and because we knew the confusion and pressure that would be on these boards when integration was attempted in any area. I am still hopeful that maybe we can channel this phase of the school prob-

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lem—the assignment powers—back to the State Board and away from the localities. As long as possible it is important that we maintain a state-wide policy, and this can certainly be best accomplished through a central assigning agency."

Plaintiffs' Exhibit 144-H, a letter dated [R-107] September 23, 1964, to Mr. Tyler Fulcher, Division Superintendent, County School Board of Amherst County.

"Dear Mr. Fulcher: I have your letter of September 22, 1964, in which you have asked the following question: 'If pupil A lives in Amherst County and attends a Nelson County school, is he entitled to a scholarship as a matter of right even though the Amherst County School Board provides him with transportation within 100 yards of his home and even though the school which he would attend has plenty of room for him and is generally regarded as a grade A school?'

"It is my opinion there is no question but pupil A is entitled to a scholarship grant."

Plaintiffs' Exhibit 144-I, a letter dated October 7, 1957, to the Honorable Thomas B. Stanley, Governor of Virginia.

Attached to that letter is—I am sorry, I best make reference to it, "Appended is a short statement concerning Chapter 69, Article 2, of Chapter 9.1 of Title 22."

From that statement I direct the Court's attention to page four as marked internally within the statement: "Immediately upon enrollment of a Negro child, [R-108] the representative of the Governor (either the Division Superintendent or some other school official, or the Superintendent of State Police) shall assemble the student body and the faculty and read to them a statement prepared by the Governor. This statement would apprise the faculty and the student body that—by virtue of the powers vested in him by the General Assembly—the Governor is assuming

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control of the school in question and directs the student body and the faculty to leave the school property, subject to further orders of the Governor. The Governor will then be in a position to determine whether or not it is necessary, in order to protect the property and to prevent any incidents, to maintain a contingent of police at the premises during the time the school is closed and he is attempting to have it reorganized and restored to the school system."

We have marked, Your Honor, as Plaintiffs' Exhibit 146, minutes of the State Board of Education dated February 3, 1961, with attachment to the State Board of Education regulations regarding placement of pupils.

Dr. Wilkerson testified with regard to [R-109] certain letters that were shown to him that there was a method by which cities might elect out from under the Pupil Placement Board. These set forth those regulations and forms.

We have marked as Plaintiffs' Exhibit 145 the answers of the County School Board of Chesterfield County, Virginia, and Fred D. Thompson, Division Superintendent of Schools, to interrogatories in the case in the files of this court, *Sheila Jane McLeod v. County School Board of Chesterfield County*, Civil Action 3431.

I would like to read the second answer to the second interrogatory.

"As to the second interrogatory, as is alleged in paragraph eight of the complaint, all power of enrollment or placement of pupils in the public schools in Virginia is conferred upon the Pupil Placement Board and such functions are performed by said Board insofar as the public schools of Chesterfield County, Virginia, are concerned. The answer of the Pupil Placement Board heretofore filed is therefore the only appropriate or material answer to said interrogatory."

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We have marked as Plaintiffs' Exhibit 147 the complaint in that cause. We would direct the Court's [R-110] attention to paragraph 11, page 7, of the complaint with respect to the allegations of the procedures for the Pupil Placement Board and the criteria applied therewith.

Plaintiffs' Exhibit 148 is the report entitled "Paths to Progress" from the Richmond Region 1970-'71 prepared by the Richmond Regional Planning District Commission. There have been so many readings from this report we indicated to the Court we would mark it as an exhibit.

Plaintiffs' Exhibit 149 is a summary of records produced by the State Attorney General with reference to attorneys' fees and expenses in school litigation. It shows the figures by year 1955 to 1971.

The figure 1955 was $1,295. 1971 was $99,431.39 for a total of $766,175.31.

In that connection we direct the Court's attention to 149-C which is correspondence produced by the State Board of Education pursuant to the subpoena. The second page, I am sorry, the cover page is a letter addressed to Dr. Thomas E. Little dated June 17, 1971, from Andrew P. Miller, Attorney General. The second document is a letter dated June 4, 1971, from Dr. Little [R-111] attaching certain fee schedules.

I read this at this time in connection with the totals given for 1971, which do not include these figures. I would like to read Dr. Little's letter to Mr. Miller.

"In 1964 and again in 1966 the Attorney General's Office reimbursed the School Board of the City of Richmond for one-half of the legal fees and expenses in connection with the case of *Bradley v. School Board of the City of Richmond*, Civil Action Number 3353.

"I am submitting herewith receipted invoices for legal

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services relative to the same case for the period beginning March 15, 1970, through April 30, 1971, for consideration for reimbursement from such funds as are available."

The statement lists the following disbursements, "Mays, Valentine, Davenport and Moore, statement of 8/1970, $15,000.00; expenses, $1,480.86; for a total of $16,480.86.

"Firm of Jeffreys and Lawler, statement of October 2, 1970, and April 22, 1971, $7,564.30 and $12,015.00 in fees, total expenses of $69.00 and total fees $19,648.30.

[R-112] "Browder, Russell, Little and Morris, four statements and total billings, $90,155.83 in fees, expenses, $6,962.23 for a total of $94,118.06. [*sic*]

"Total fees submitted to the State Attorney General's Office, fees and expenses, $130,247.22."

A letter of the Attorney General as follows, "I hereby acknowledge receipt of your recent letters with certain enclosures relating to the case of *Bradley, et al.,* v. *School Board of the City of Richmond, et al.* You refer to the fact that this office in 1964 and in 1966 approved reimbursement of one-half of the legal fees and expenses incurred in connection with this litigation. You now ask that similar reimbursement be made available for the period from March 15, 1970, through April 30, 1971.

"As you are aware, the posture of this case has changed drastically in recent months. The School Board of the City of Richmond has brought the State Board of Education into the suit as a third-party defendant. This office is serving as counsel for the State Board. Under these circumstances, I do not believe that it would be proper for me to authorize reimbursement of legal fees and expenses incurred on behalf of a party which has brought suit against a state [R-113] agency. I must respectfully decline, therefore, to grant your request."

For comparison purposes I would read a letter of June 18, 1971, I am sorry, a letter delivered June 11, 1971, by hand on the stationery of the County of Henrico to the Attorney General in reference to this case: "Attached please find Warrant and Vendor's invoice representing legal services and expenses incurred by Robert D. McIlwaine, III, attorney at law, in regard to the above-captioned case in which he represents the School Board of the County of Henrico, Virginia. This bill has been paid."

It shows for a period 11/9/70 thorugh 5/20/71 $11,080.00, expenses, $468.25 for a total of $11,548.25.

The reply of the Attorney General to this request to Mr. J. Mercer White, County Attorney, Henrico County, in re this case: "I hereby acknowledge receipt of your recent letters relating to the above-styled litigation. With your letters you have enclosed a copy of the bill submitted by Robert D. McIlwaine, III, Esquire, for services rendered and expenses incurred as counsel for the School Board of Henrico County as well as of the Warrant and Vendor invoice showing this [R-114] bill to have been paid. You are correct that in the past this office has authorized reimbursement to the localities of a portion of the legal costs incurred in the defense of school desegregation cases. These instances have involved suits brought against local school boards in various localities. In none of the cases, to my knowledge, has the situation arisen where one school board has sued another school board. Under these circumstances, I do not think it would be proper for me to authorize reimbursement of bills for legal services and expenses incurred by either school board. This is particularly true when, as in this case, the Attorney General's Office is representing one of the other parties. For this reason, I must respectfully decline to approve reimbursement of any portion of the bill which you enclosed."

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Plaintiffs' Exhibit 149-B is a summary sheet for the same material breaking out the figures for 1955-1971. The total figure appears right after the year and then the state amount portion allocatable to fee and amount for expenses. This is done the same for each year.

Total amount paid by the state through the State Attorney General's Office is $484,074.05.

[R-115] Total amount of fees billed reflected in this summary is $669,112.60.

Expenses of $75,416.77.

Once again it does not include any of the figures in 149-C.

149-A is a summary of the data from records produced by the State Attorney General with reference to these attorneys' fees broken down by case, payee, total state fee and expenses by year.

This document has been furnished to counsel. It covers the same period 1955 to 1971.

[R-143] * * *

Mr. Byrne: Yes, sir.

If it please the Court, in connection with Henrico's Exhibit 37 and 37-A dealing with restrictive covenants, counsel have agreed that the examination of M. Pope Taylor, beginning on page 828 through page 840—wait a minute. Volume 22 from the transcript of the previous trial could be admitted with reference to that, sir.

PLAINTIFFS' PROPOSED ORDER

Filed October 18, 1971

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

[Title Omitted in Printing]

It is hereby Ordered:

1. The defendant State Board of Education, its Superintendent, the defendant school districts, their superintendents, and the respective defendant governmental units acting jointly but under the direction of the State Board of Education shall prepare and submit within 45 days a desegregation plan for all of the public schools located within the political boundaries of the counties of Henrico and Chesterfield and the city of Richmond. Said plan shall accomplish the greatest possible degree of actual desegregation to the end that no school in the area described shall have a student enrollment substantially disproportionate at any grade level to the racial composition of the area described. Racial balance is not required in any school. However, the proportions of black and white students in the entire area shall be the starting point for consideration by the defendants. Any plan proposed shall be intended for full implementation at all grade levels no later than the start of the 1972-73 school year.

2. In preparing the plan or plans required to be submitted by and through the state defendants, the defendants may employ any and all of the procedures or devices provided or authorized by the Constitution and laws of the

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Commonwealth of Virginia and any other criteria and techniques as are educationally sound and administratively feasible. They may use any portion of or all or none of the desegregation plan previously suggested by the defendant Richmond School Board for the described area.

3. For the purpose of effectuation of the desegregation of the public schools, each of the defendants shall take all necessary steps including, but not limited to, adoption of resolutions, formal requests or any other act necessary, to establish by and through the State Board of Education, a single school division in the described area having but one school board in accordance with the laws of Virginia.

4. The State Board of Education and its Superintendent, their officers, agents, employees, successors, and all persons in active concert or participation with them, are enjoined from permitting, engaging in, giving consent and approval to, or supporting any policy or practice which tends to maintain or re-create racially identifiable schools in the Commonwealth of Virginia. If in the exercise of its educational judgment the defendant State Board of Education determines it should, in order to meet its affirmative duty to disestablish the pattern of racially identifiable schools, include in whole or in part other nearby school divisions in any proposed plan, they may propose an alternate plan including such areas. The State Board shall exercise its full powers under State law but is, in meeting federal constitutional requirements, in no way limited by any state constitutional or statutory requirements.

Specifically, they are enjoined from permitting, approving or supporting, by any means:

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(a) The inter-district transfer of students within the Commonwealth of Virginia which will reduce or impede desegregation or which will reinforce, renew or encourage the continuation of acts and practices resulting in discriminatory treatment of students on the ground of race, color, or national origin;

(b) The formation, establishment, grouping, rearrangement, consolidation, re-classification, abolition, subdivision, combination, alteration, or change (including, but not limited to the transfer, attachment, or detactment of land or territory) of any school district or districts, or parts of districts, in the Commonwealth of Virginia, which will reduce or impede desegregation or which will reinforce, renew or encourage the continuation of acts and practices resulting in discriminatory treatment of students on the ground of race, color or national origin.

5. That with respect to all non-academic activities including, but not limited to, athletics, clubs, band, and cheerleading, and including also the appointment or election of officers for any such extra-curricular groups or activities, as well as election of class officers, all such activities and elections shall be made available to all students in the single school division without regard to race, color, or national origin, and without regard to their previous district of attendance. Elections and appointments in connection with such extra-curricular activities for the 1972-73 school year, as well as elections for class officers, shall be held in the single school division within five days after the expiration of the first four weeks of the 1972-73 school year.

6. That if extra-curricular activities are scheduled to take place during the afternoon and evening hours following the

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end of regular classes, school transportation shall be provided to all students eligible for state transportation who participate in these after-school extra-curricular activities and no student shall be prevented from such participation by his inability to provide his own transportation.

7. If the creation of a single school division required under this order necessitates a reduction in the number of superintendents, principals, teachers, teacher-aides, or other professional staff now employed by the three districts involved, and if this reduction will result in the dismissal or demotion of any such staff members, the selection of any staff members to be dismissed or demoted must be made on the basis of objective, non-racial and non-ethnic standards from among all the staff members of the single school division including all those presently employed in the separate districts. Within these guidelines, the defendants and the successor division shall avoid any substantially disproportionate reduction or removal of black personnel from positions of control or authority.

8. Staff members who work directly with children and professional staff who work on the administrative level shall be hired, assigned, promoted, paid, demoted, dismissed, or otherwise treated without regard to race, color or national origin. There shall, however, be no reduction by the defendants or their successors of their efforts to increase minority group representation among their faculties and professional staffs.

9. In addition, if in the implementation of this order or in the operation thereunder, there is to be any such reduction of staff by dismissal or demotion, no staff vacancy may

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be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member with appropriate certification has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

10. The school board of the single school division shall develop objective, non-racial and non-ethnic criteria to be used in the hiring, assigning, promoting, paying, demoting, and dismissing of staff members. These criteria shall be developed and made available for public inspection prior to the single school division's staffing its system for the 1972-73 school year, a copy thereof shall be submitted to the Court with a copy to the plaintiffs, and a copy thereof shall be retained by the school division. The school division also shall record its evaluations of staff members under the criteria described above and shall preserve these records for as long as the staff member is employed by the division, and for at least three years following the termination of the staff member's employment by the division. The record of such evaluations shall be made available to a dismissed or demoted employee upon request.

11. "Demotion" as used above includes any reassignment (a) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, (b) which requires a lesser degree of skill than did the assignment he previously held, or (c) under which the staff member is asked to teach a subject or grade other than one in which he is certified or one in which he has had substantial experience within a period of five years.

12. Within the limitations of available certified personnel, all vacancies in the faculty or staff of any school

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which occur after the beginning of the school year shall be filled by persons of the same race as the race of the person vacating the position or positions involved.

13. The transportation system shall be regularly re-examined by the Superintendent of the district, his staff, and the school board. Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-discriminatory basis.

14. If the single school division grants transfers to students living in the division for their attendance at public schools outside the division, or if it permits transfers into the division of students who live outside the division, it shall do so on a non-discriminatory basis. In addition, it shall take appropriate steps to inform itself of the effect of such transfers on desegregation and it shall not consent to transfers where the cumulative effect will be to reduce desegregation in either division.

15. In the preparation, adoption, implementation and operation of a plan of desegregation in this cause, for a single school division of the former Richmond, Henrico and Chesterfield districts or, upon the election of the State Board and the approval of the Court, involving all or part of any other subdivisions of the state educational system, the defendant State Board shall, in the event of noncompliance with its directives, take the following actions:

(a) If within five days of the effective date of any order of change required to meet the State Board's affirmative duties under the Fourteenth Amendment, a school division has not complied, the State Board shall notify the district that none of its schools will be accredited by the Board.

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(b) If within ten days thereafter the order has not been obeyed or otherwise complied with, all state funds shall be withheld from said district as of that date.

(c) If within five days thereafter, the order has not been obeyed, the state shall take all further steps necessary including, but not limited to, request to the Attorney General of the State that he pursue the remedy of mandamus under State law, and application to this Court by the State Board or any other party for appropriate relief.

16. A Bi-racial Committee to be composed of equal numbers of black and white members and, in no event fewer than five of each race, shall be established to assist in the transition from racially identifiable schools to "just schools." The members will be chosen by the Court from lists of six names submitted by the plaintiffs, the State Board of Education and the three constituent defendant districts. All persons submitted shall be residents of the area to be served. The Court may select persons not named by any of these parties for inclusion on the Committee. The proposed members of the Committee shall be approved by the Court. The names shall be submitted within five days of the entry of this order.

17. Pending the submission and approval of a desegregation plan for the area, the defendants are enjoined from:

(a) The purchase or option of new school sites.

(b) The purchase or option of additions to existing sites.

(c) The addition of classroom facilities to existing buildings.

(d) Entering into contracts for architect services, signing of construction contracts for schools or school additions.

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(e) The termination of any existing contracts, leases, or any other agreements between or among any of the defendants.

Respectfully submitted,

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Attorneys for Plaintiffs

[Certificate of Service Omitted in Printing]

MEMORANDUM OPINION AND ORDER OF UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF VIRGINIA, C.A. NO. 3353, DATED JANUARY 5 AND 10, 1972, RESPECTIVELY

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at pp. 164-545]

PINION AND ORDER OF UNITED STATES DISTRICT OURT FOR EASTERN DISTRICT OF VIRGINIA, C.A. NO. 3353, DATED JANUARY 19, 1972

Reprinted in full in Richmond School Board's Appendix etition for Certiorari at pp. 546-52]

APPLICATION FOR STAY

Filed January 25, 1972

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[Title Omitted in Printing]

Now come the State Board of Education and Preston C. Caruthers, Thomas C. Boushall, Billy W. Frazier, Catherine H. Hook, Dr. Robert E. R. Huntley, Hilary H. Jones, Jr., William B. Poff, Dr. Harold W. Ramsey and Elizabeth M. Rogers, individual members thereof; Woodrow W. Wilkerson, Superintendent of Public Instruction; the School Board of Henrico County and Gordon P. Bruce, Mrs. John L. Deusebio, J. B. Jackson, Jr., Howard W. Mears, and Walter C. Whitt, individual members thereof; Dr. Walter E. Campbell, Division Superintendent of Schools of Henrico County; The Board of Supervisors of Henrico County and George W. Jinkins, Jr., Charles W. Johnson, Anthony P. Mehfoud, Eugene T. Rilee, and Linwood E. Toombs, individual members thereof; The School Board of Chesterfield County, and C. E. Curtis, Preston T. Holmes, Edward A. Moseley, Jr., George P. Martin, and J. W. Russell, individual members thereof; and Dr. Robert E. Kelly, Division Superintendent of Schools of Chesterfield County; The Board of Supervisors of Chesterfield County and J. Ruffin Apperson, Irving G. Horner, A. J. Krepela, Leo Myers, and E. M. O'Neill, individual members thereof; appellants in the above styled case, and respectfully move the Court to stay the enforcement of the District Court's order of January 10, 1972, in this action pending the disposition of their appeals to this Court.

[p. 40] * * *

The evidence in this case contains no suggestion of the administrative personnel needed or how best to organize the

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consolidated system. Nothing is said and no expert studied or testified respecting the educational program or philosophy which will be best suited to the needs of the consolidated division. Not a word appears in the record to indicate how the operation costs will be provided, no one has suggested how bonds can be issued to finance needed buildings or how capital outlay money can be raised. Nothing is provided in the Order and nothing is said by any witness in the record to suggest a fair method for repayment of school bonds outstanding in the three divisions.

The evidence indicates that Richmond's school buildings are old and obsolete in some cases; while Chesterfield and Henrico have gone forward in the past decade and a half with aggressive modern building programs. These are problems which require study by impartial and experienced specialists in their several fields, before any fair solution can be reached. It is, therefore, respectfully submitted that the plan disclosed [p. 41] by Dr. Little's print-out is not a school consolidation plan, but is only the bare bones of a scheme for the dispersal of children among the three existing systems for the avowed purpose of achieving "a viable racial mix."

The Court's attention is directed to the fact that throughout this proceeding the State and county defendants have objected to the admission of evidence with respect to a plan for the merged school district. Our view has been that in order to intelligently study the problem we must first know what the constitutional rights of the class action plaintiffs are with respect to being placed in a school with a more desirable racial mix and, what are the burdens which the Constitution requires that white children bear in order to fill their appropriate role in bringing about such a desired racial mix in the public schools. If the Constitution requires the dispersal of children as proposed by Dr. Little, it seems this could be accomplished without doing away with political

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subdivision lines and without setting up a great superstructure of management and all of the administrative personnel which would necessarily be required in each of the six subdivisions with all of the back-up clerical and staff assistants that would have to be added to each of those divisions. (See Dr. Kelly's affidavit, Appendix "E") We have felt that if a mixture of children according to race in order to obtain a certain percentage is demanded by the Constitution that the simplest and least expensive and the most productive method of doing this would be simply upon the basis of an exchange of students between the divisions upon a tuition basis, or upon a cost basis, or upon some equitable and reasonable basis that could be worked out in order to accomplish the interchange. Surely if interchanges of pupils is all that is required, there is no necessity to destroy three separate effective and long established school systems and create a monster in its place.

[p. 42] At the least, the school divisions which are being destroyed should be accorded the opportunity, after their constituional obligation has been declared, to offer a plan for the interchange of white and black children, which might meet the requirements of the Constitution and avoid the destruction of the three separate divisions.

* * *

The State Board of Education and
the Superintendent of Public
Instruction

By /s/ Andrew P. Miller
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[Appendices and Certificate of Service Omitted in Printing]

ORDER OF UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, NOS. 72-1058, -1059, -1060, AND -1150, GRANTING PARTIAL STAY, DATED FEBRUARY 8, 1972

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at pp. 553-56]

OPINIONS AND JUDGMENT OF COURT OF APPEALS DATED JUNE 5, 1972

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at pp. 557-602]

AMENDED JUDGMENT OF COURT OF APPEALS, NOS. 72-1058, -1059, -1060, AND -1150, DATED AUGUST 14, 1972

[Reprinted in full in Richmond School Board's Appendix to Petition for Certiorari at p. 603]

Supreme Court of the United States

No. 72-549

School Board of the City of Richmond, Virginia, et al.,

Petitioners,

v.

State Board of Education of the Commonwealth of Virginia, et al.

ORDER ALLOWING CERTIORARI. Filed January 15 ----------, 1973.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth ---------- Circuit is granted. The case is consolidated with No. 72-550 and a total of one hour is allotted for oral argument.

Mr. Justice Powell took no part in the consideration or decision of this petition.

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Supreme Court of the United States

No. 72-550

Carolyn Bradley, et al.,

Petitioners,

v.

State Board of Education of the Commonwealth of Virginia, et al.

ER ALLOWING CERTIORARI. Filed January 15 ----------, 1973.

The petition herein for a writ of certiorari to the United States Court of eals for the Fourth ---------- Circuit is granted. The case consolidated with No. 72-549 and a total of one hour is otted for oral argument.

Mr. Justice Powell took no part in the consideration or ision of this petition.

EXHIBITS

MAR 1 1973

MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1972

No. 72-549

THE SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,

Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,

No. 72-550

CAROLYN BRADLEY, ET AL.,

Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

CERTIORARI GRANTED JANUARY 15, 1973
PETITIONS FOR WRITS OF CERTIORARI
FILED OCTOBER 4, 5, 1972

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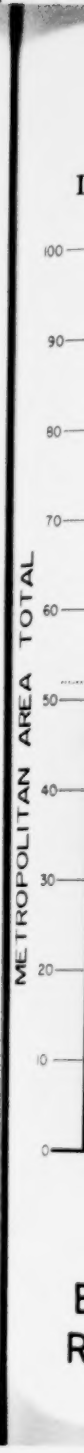
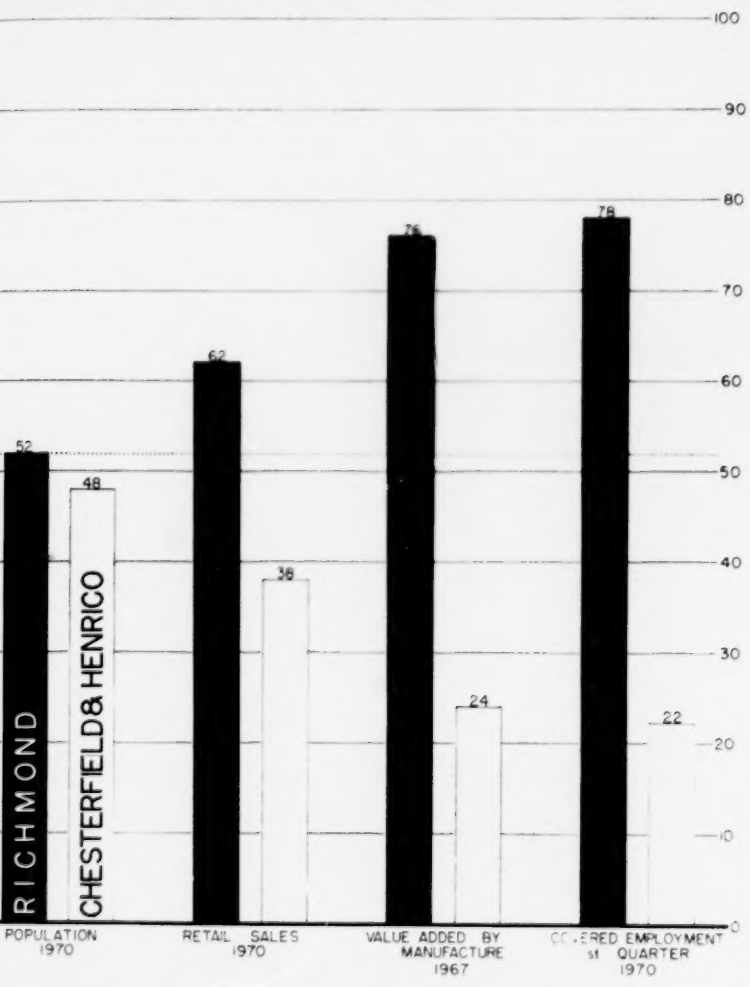


COPY BOUND CLOSE

CONCENTRATION OF ECONOMIC FUNCTIONS IN RICHMOND METROPOLITAN AREA

[Richmond School Board's Exhibit Nos. 54 and 54A to District Court Proceedings of August 16, 1971]



CONCENTRATION OF CERTAIN ECONOMIC FUNCTIONS IN THE RICHMOND METROPOLITAN AREA

Richmond School Board
Exhibit No. 54A

Bradley vs. City of Richmond

TABLE 54A

ECONOMICS INDICES

RETAIL SALES - 1970 (1)

Richmond	$657,706,895	62.5%
Chesterfield	56,572,590	5.4
Henrico	340,817,508	32.3
Total	$1,055,096,993	100.0%

VALUE ADDED BY MANUFACTURING - 1967 (2)

Richmond	$582,400,000	76%
Chesterfield	155,900,000	20
Henrico	31,300,000	4
Total	$769,600,000	100%

COVERED EMPLOYMENT - 1970 (3)

Richmond	$ 129,590	78.4%
Chesterfield	12,868	7.8
Henrico	22,872	13.5
Total	$ 165,330	100.0%

Source - (1) Commonwealth of Virginia; Department of Taxation
(2) U. S. Bureau of Census
(3) Commonwealth of Virginia: Virginia Employment Commission

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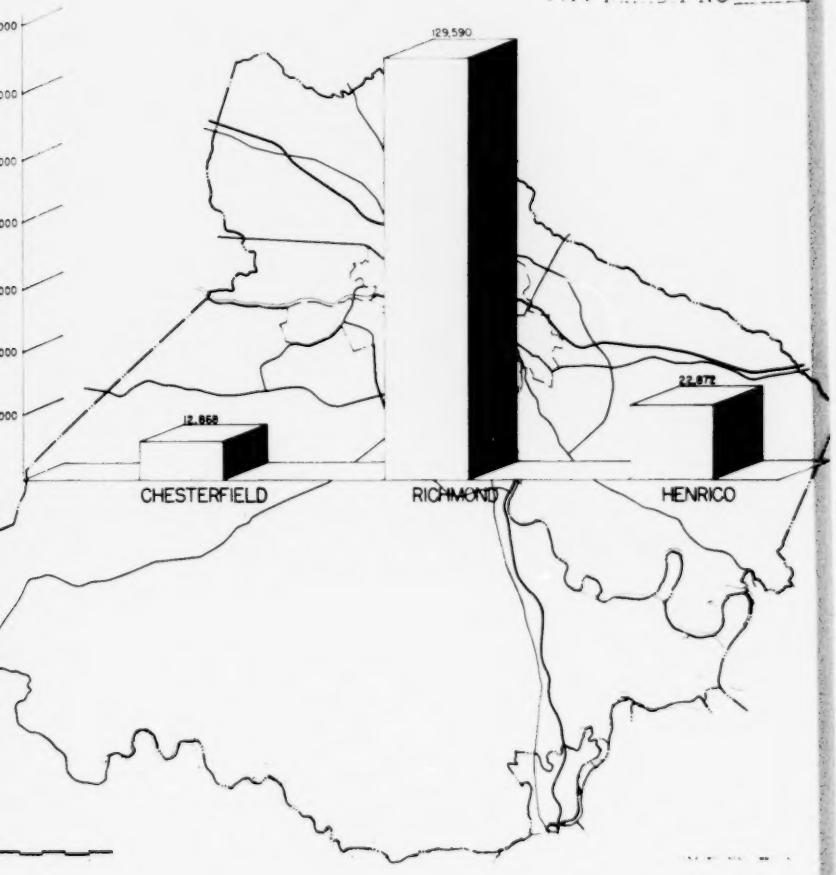
COMPARISON OF EMPLOYMENT
RICHMOND METROPOLITAN AREA 1970

[Richmond School Board's Exhibit No. 55 to District Court Proceedings of August 16, 1971]

EXHIBIT NO. 55



COMPARISON OF EMPLOYMENT
RICHMOND METROPOLITAN AREA
1970

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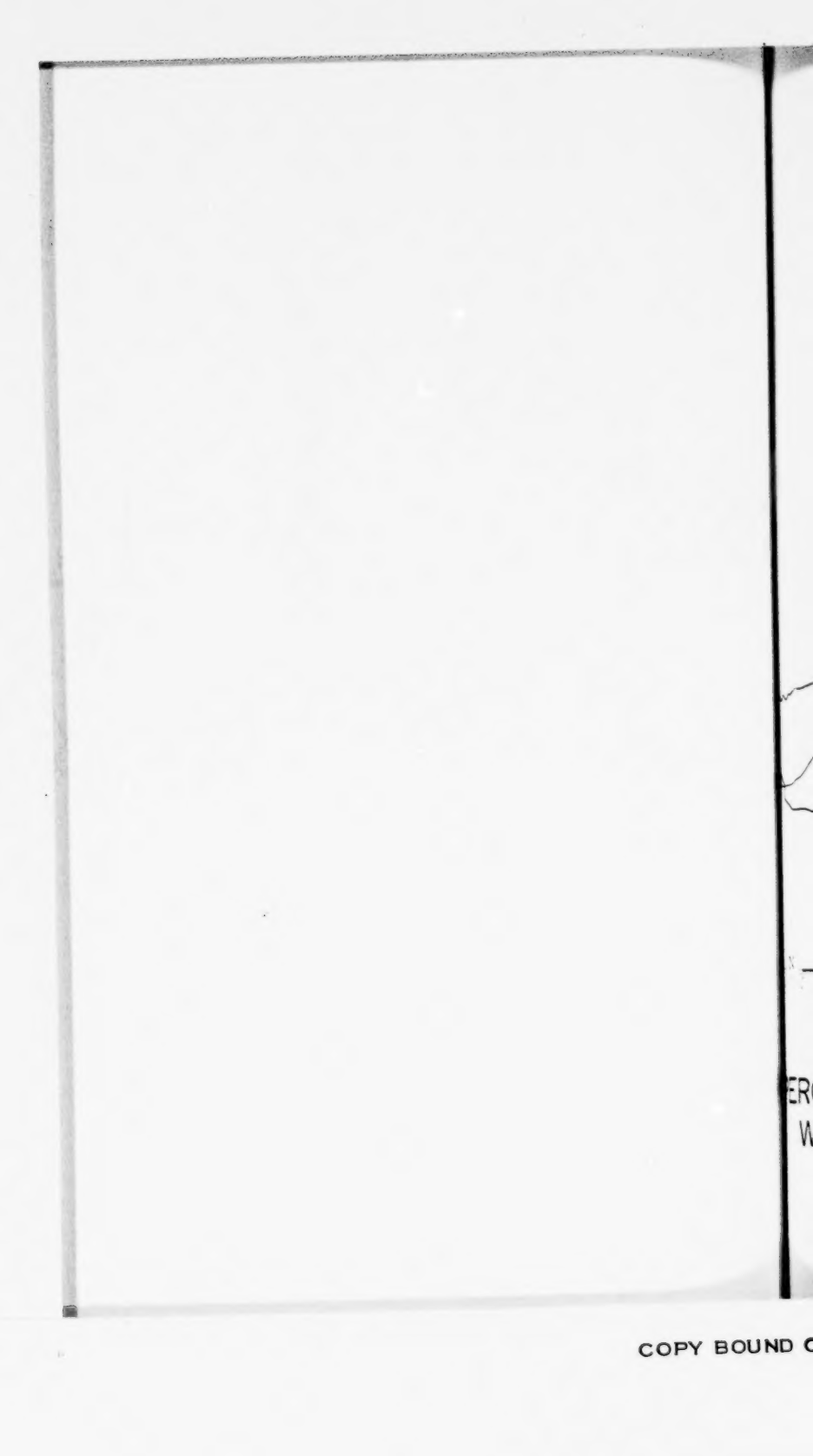

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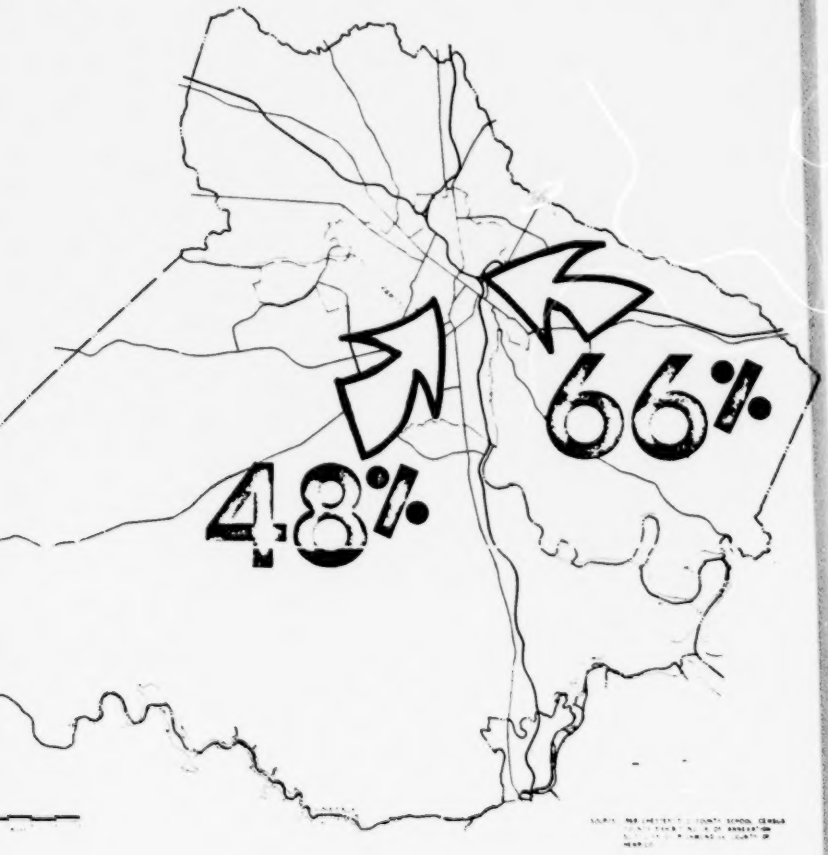
PERCENTAGE OF EMPLOYED COUNTY RESIDENTS WHO WORK WITHIN CITY OF RICHMOND

[Richmond School Board's Exhibit Nos. 56 and 56A to District Court Proceedings of August 16, 1971]

CITY EXHIBIT NO. 56



ENTAGE OF EMPLOYED COUNTY RESIDENTS
HO WORK WITHIN THE CITY OF RICHMOND

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Richmond School Board
Exhibit No. 76A

Bradley vs. City of Richmond

TABLE 76A

PERCENTAGE OF EMPLOYED COUNTY RESIDENTS WHO
WORK WITHIN THE CITY OF RICHMOND

Place of Residence	Location of Employment			
	Chesterfield	Henrico	Richmond	Other
Chesterfield	36.47%	3.01%	47.80%	12.69%
Henrico	3.91%	23.63%	66.14%	6.32%

Source: Chesterfield - 1964 Chesterfield County School Census

Henrico - 1963 Annexation Suit - City of Richmond vs. County of Henrico
County Exhibit No. 116

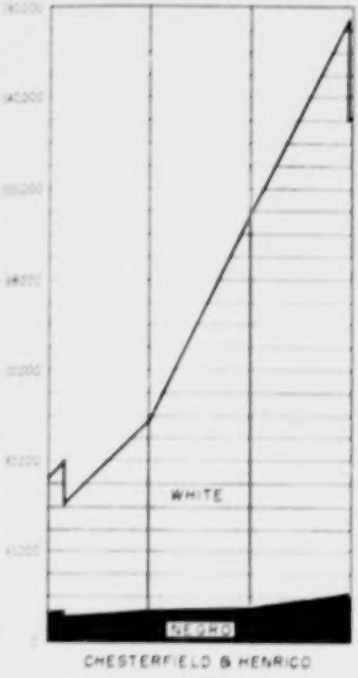
COPY BOU

RACIAL COMPOSITION TRENDS OF METROPOLITAN AREA 1940-70

[Richmond School Board's Exhibit Nos. 57 and 57A to District Court Proceedings of August 16, 1971]

CITY EXHIBIT NO 57

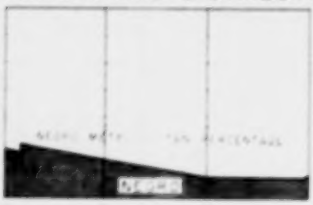
NUMBER OF PERSONS OF EACH RACE



CHESTERFIELD & HENRICO

RICHMOND

PERCENTAGE DISTRIBUTION



CHESTERFIELD & HENRICO

RICHMOND

RACIAL COMPOSITION TRENDS OF METROPOLITAN AREA 1940-70

Richmond School Board
Exhibit No. 57A

Bradley vs. City of Richmond

TABLE 57A

RACIAL COMPOSITION TRENDS OF METROPOLITAN AREA 1940-70

Year		Metropolitan Area	Richmond City	Chesterfield County	Henrico County	Combined County
1940	Total	266,185	193,042	31,183	41,960	73,143
	Negro	74,565	61,336	6,251	6,978	13,229
	Negro Percent	28.0	31.8	20.0	16.6	18.1
1950	Total	328,090	230,310	40,400	57,340	97,740
	Negro	87,703	73,082	8,431	5,690	14,121
	Negro Percent	26.6	31.7	20.9	9.9	14.4
1960	Total	408,494	219,958	71,197	117,339	188,536
	Negro	107,936	92,331	9,435	6,070	15,505
	Negro Percent	26.3	42.0	13.3	5.2	8.2
1970	Total	[illegible],840	249,621	76,855	154,364	231,219
	Negro	125,159	105,764	8,843	10,552	19,395
	Negro Percent	26.0	42.3	11.5	6.8	8.4

Source: U. S. Bureau of Census

Richmond School Board
Exhibit No. 59A

Bradley vs. City of Richmond

TABLE 59A

MAJOR PUBLIC & SEMI-PUBLIC FACILITIES
SERVING METROPOLITAN RICHMOND

Key Number	Facility
1	Lewis Ginter Botanical Garden
2	Spring Lake Golf Club
3	Lakeside Branch Library
4	Laurel Park Golf Course
5	Par 3 Golf Course
6	Tuckahoe Branch Library
7	University of Richmond
8	Williams Island
9	St. Mary's Hospital
0	Bryan Park
1	Westbrook Sanatorium
2	Ginter Park Branch Library
3	Atlantic Rural Exposition Grounds
4	Chickahominy Bluff Battle Park
5	Glenwood Golf Course
6	Fairfield Branch Library
7	Sandston Branch Library
8	Richard E. Byrd International Airport
9	Chimborazo Park
0	East End Branch Library
1	City Wharf
	Medical College of Virginia Hospital
	Richmond Eye, Nose & Throat Hospital
	Virginia Commonwealth University - Health Science Division
	Confederate Museum
	Valentine Museum
	Coliseum
	State Library
	Trailways Bus Terminal
	Greyhound Bus Terminal
	Richmond Public Library
	Tuckers Hospital
	Mosque
	Grace Hospital
	St. Elizabeth's Hospital

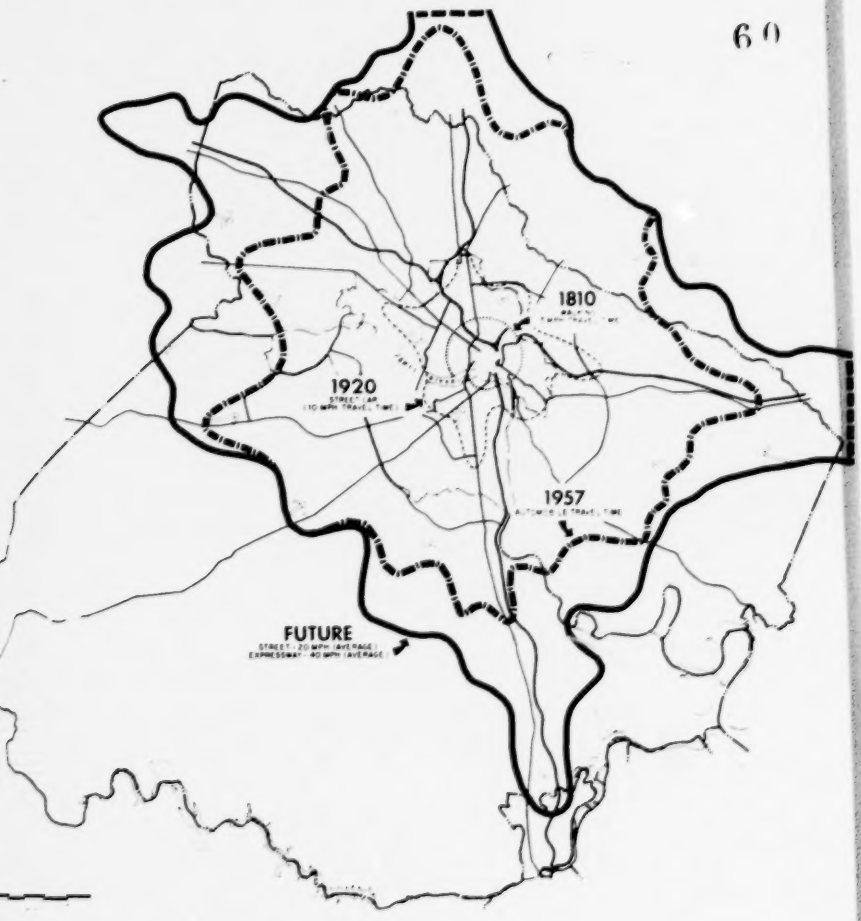
Major Public & Semi-Public Facilities
Serving Metropolitan Richmond

Key Number	Facility
36	St. Luke's Hospital
37	Virginia Commonwealth University
38	Stuart Circle Hospital
39	Virginia Union University
40	Richmond Community Hospital
41	Cerebral Palsy Hospital
42	Crippled Children's Hospital
43	Prebyterian School of Christian Education
44	Union Theological Seminary
45	Sheltering Arms Hospital
46	Richmond Memorial Hospital
47	Parker Field
48	Arena
49	Broad Street Station
50	Johnston-Willis Hospital
51	Retreat for the Sick
52	Virginia Museum of Fine Arts
53	Belmont Branch Library
54	City Stadium
55	Byrd Park
56	Dogwood Dell
57	Maymont Park
58	Thalhimers Wildlife Exhibit
59	James River Park
60	Forest Hill Park
61	Westover Hills Branch Library
62	Chippenham Hospital
63	Bon Air Branch Library
64	Educational TV
65	Issac Walton Park
66	Pocoshock Country Club
67	Veterens Administration Hospital
68	Pernell Airport
69	Deep Water Terminal
70	Varina Branch Library
71	Fort Darling
72	Battlefield Park
73	Henrico Boat Ramp
74	Malvern Hill National Park
75	Presque Isle National Wildlife Refure
76	Virginia State College
77	Par 3 Golf Course
78	John Tyler Community College
79	Chester Library
80	Chesterfield Fairgrounds
81	Pocohontas State Park

THIRTY MINUTE TRAVEL TIME TO CAPITOL SQUARE

[Richmond School Board's Exhibit No. 60 to District Court Proceedings of August 16, 1971]

60

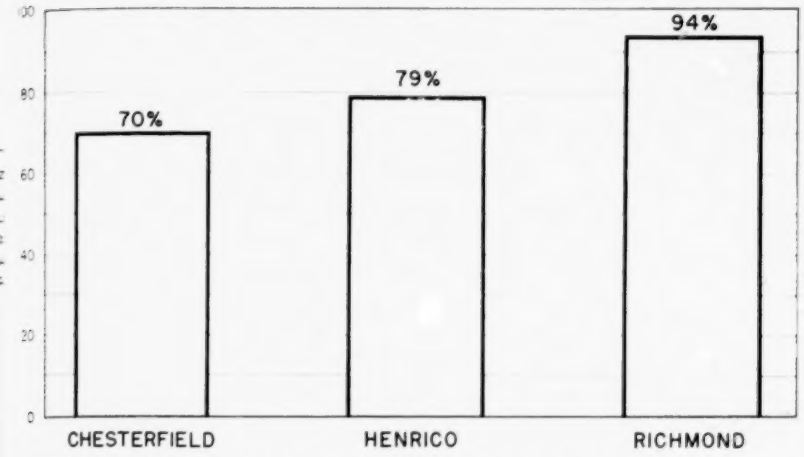


30 MINUTE TRAVEL TIME TO CAPITOL SQUARE
1810, 1920, 1957 AND FUTURE

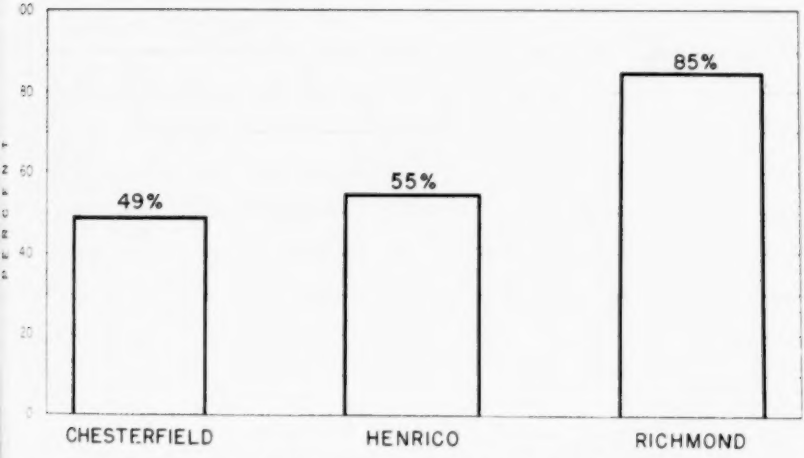
PERCENT OF BIRTHS AND DEATHS OCCURRING IN RICHMOND 1965-69

[Richmond School Board Exhibit Nos. 61 and 61A to District Court Proceedings of August 16, 1971]

CITY EXHIBIT NO. 61



PERCENT OF BIRTHS OCCURRING IN RICHMOND 1965-1969



PERCENT OF DEATHS OCCURRING IN RICHMOND 1965-1969

Richmond School Board
Exhibit No. 61A

Bradley vs. City of Richmond

TABLE 61A

HEALTH STATISTICS

PERCENT OF BIRTHS OCCURRING IN RICHMOND 1965-69

Place of Residence	5 Yr. Total Resident Births	Births Occurring in Richmond					
		1965	1966	1967	1968	1969	5 Year Percentage
Richmond	19,221	4,206	3,832	3,523	3,331	3,185	94
Chesterfield	9,870	1,550	1,387	1,280	1,347	1,366	70
Henrico	12,662	2,412	2,080	1,758	1,804	1,885	79

PERCENT OF DEATHS OCCURING IN RICHOND 1965-69

Place of Residence	5 Yr. Total Resident Deaths	Deaths Occurring in Richmond					
		1965	1966	1967	1968	1969	5 Year Percentage
Richmond	14,332	2,616	2,446	2,241	2,466	2,454	85
Chesterfield	3,028	281	268	323	285	343	49
Henrico	4,944	552	508	500	591	562	55

Source: Commonwealth of Virginia, Department of Health, Bureau of Vital Records

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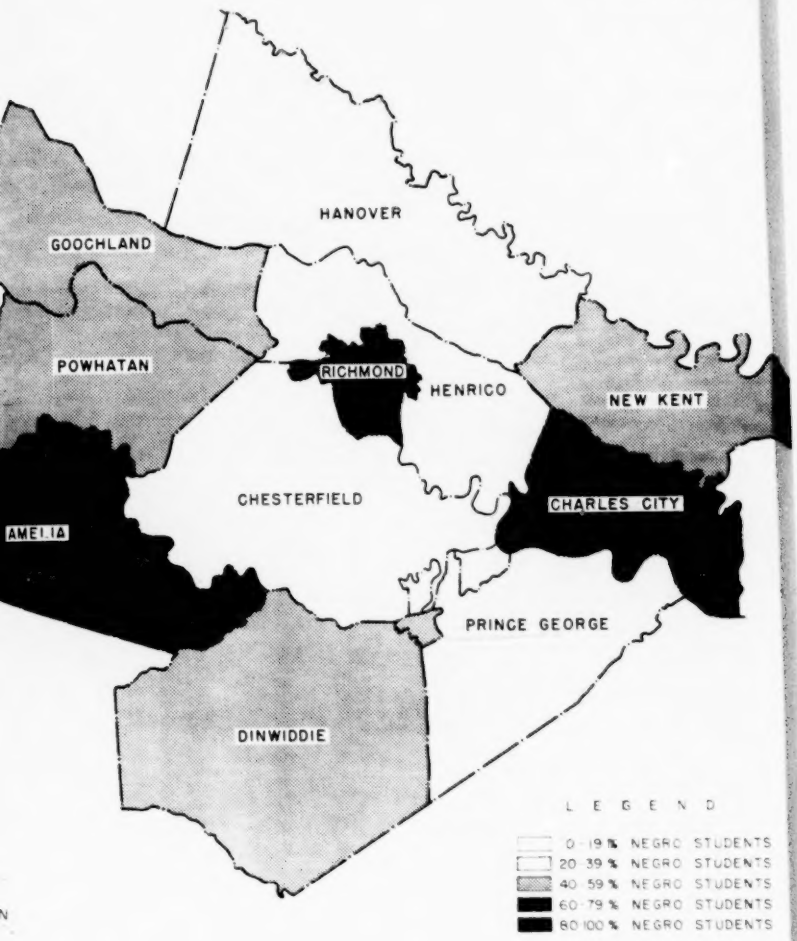
NEGRO COMPOSITION OF AREA SCHOOL SYSTEMS

[Richmond School Board's Exhibit Nos. 52 and 52A to District Court Proceedings of August 16, 1971]

CITY EXHIBIT NO 5



NEGRO COMPOSITION OF AREA SCHOOL SYSTEMS

VERTICALLY

Richmond School Board
Exhibit No. 52A

Bradley vs. City of Richmond

TABLE 52A

NEGRO COMPOSITION OF AREA
SCHOOL SYSTEMS 1970-71

	Percent Negro Students
Amelia County	64.0
Charles City County	83.8
Chesterfield County	9.4
Colonial Heights	0
Dinwiddie County	52.0
Goochland County	57.0
Hanover County	24.0
Henrico County	8.1
Hopewell	18.0
New Kent County	56.5
Petersburg	67.0
Powhatan County	40.0
Prince George County	26.3
RICHMOND	63.8

Source: Virginia State Board of Education
November 25, 1970

VIRGINIA EDUCATIONAL NEEDS ASSESSMENT STUDY, 1970

[Richmond School Board's Exhibit No. 69]

[Vol. I]

* * *

[p. 336] * * * The reported classification of total revenues for Virginia—state sources, 37 per cent; Federal, 11 per cent; local and other 52 per cent—were quite close to national averages, except for the higher percentage contribution to the state from the Federal government. About one-third of the support for the State Department of Education is now derived from this source, reflecting both the expanded administrative costs and workloads of national programs initiated during the 1960's and the addition of funds from Title V of ESEA, used for strengthening the leadership capabilities of the state agency.

The revenue source most sensitive to state-wide programmatic recommendations and effort is of course the state's own provision for aid to its local school divisions. In Virginia, the public school finance program has several distinctive features. As described above, use if made of minimum teacher salary scales and pupil-teacher ratios in determining local allocations from the basic state school aid fund, which accounts for 80 per cent of all state school funding. The state bears the entire cost of the teacher retirement plan and makes grants to the local divisions for a portion of pupil transportation costs. Provision is made for low-interest loans to school divisions for school building construction: but no continuing grants are made for this purpose, as is the case in a number of states. *Virginia's school divisions differ from those of most other states in their fiscal dependence; that is, the lack of independent authority to tap local sources of revenue for school purposes.* Their annual

budgets and authorizations for issuance of bonds for capital outlay must receive the approval of local boards of supervisors. *Relative to other states, Virginia has a long standing record for low tax effort in relation to per capita personal income, though in the past decade her rank in this regard has moved upward.* The Research Division of the NEA reported that Virginia's per capita state tax collections in 1968 were $156 in comparison with a national average of $183.

* * *

RICHMOND SCHOOL SYSTEM RACIAL COMPOSITION (1919-1970)

[Richmond School Board's Exhibit No. 75 to District Court Proceedings of August 16, 1971]

RICHMOND CITY SCHOOL SYSTEM
RACIAL COMPOSITION
(1919-1970)

No. White	Per Cent	No. Black	Per Cent	Total
16,772	70.1%	7,143	29.9%	23,915
17,255	69.4%	7,601	30.6%	24,856
17,871	68.9%	8,067	31.1%	25,938
18,345	68.9%	8,267	31.1%	26,612
19,020	69.1%	8,502	30.9%	27,522
18,999	68.6%	8,677	31.4%	27,676
19,125	71.5%	7,611	28.5%	26,736
19,689	69.7%	8,543	30.3%	28,232
20,251	70.1%	8,642	29.9%	28,893
20,692	69.5%	9,061	30.5%	29,753
21,367	70.1%	9,097	29.9%	30,464
21,569	68.9%	9,734	31.1%	31,303
21,982	68.8%	9,952	31.2%	31,934
22,052	68.0%	10,389	32.0%	32,441
21,783	67.2%	10,613	32.8%	32,396
21,633	66.9%	10,693	33.1%	32,326
21,370	67.6%	10,536	33.4%	31,906
21,692	66.9%	10,410	33.1%	31,102
20,839	66.5%	10,401	33.5%	31,055
20,192	65.2%	10,763	34.8%	30,955
19,506	63.9%	11,091	36.1%	30,693

School Year	No. White	Per Cent	No. Negro	Per Cent	T
1940-41	18,492	62.1%	11,280	37.9%	2
1941-42	19,280	63.0%	11,350	37.0%	3
1942-43	18,374	63.5%	10,561	36.5%	2
1943-44	17,634	62.8%	10,451	37.2%	2
1944-45	17,580	62.1%	10,716	37.9%	2
1945-46	17,479	61.6%	10,877	38.4%	2
1946-47	17,288	60.7%	11,171	39.3%	2
1947-48	17,726	60.1%	11,768	39.9%	2
1948-49	18,059	59.6%	12,225	40.4%	3
1949-50	18,152	59.2%	12,519	40.8%	3
1950-51	18,037	58.8%	12,612	41.2%	3
1951-52	18,113	58.8%	12,915	41.2%	3
1952-53	19,526	58.9%	13,623	41.1%	3
1953-54	20,052	57.9%	14,592	42.1%	3
1954-55	20,259	56.9%	15,508	43.9%	3
1955-56	19,853	54.7%	16,413	45.3%	3
1956-57	19,522	52.8%	17,479	47.2%	3
1957-58	19,203	50.9%	18,530	49.1%	3
1958-59	19,209	48.9%	20,047	51.1%	3
1959-60	18,518	46.7%	21,166	53.3%	3
1960-61	18,087	44.5%	22,599	55.5%	4
1961-62	17,713	42.7%	23,829	57.3%	4
1962-63	17,641	41.4%	24,951	58.6%	4
1963-64	17,539	40.2%	26,092	59.8%	4

School Year	No. White	Per Cent	No. Negro	Per Cent	Total
1963-64	17,539	40.2%	26,092	59.8%	43,631
1964-65	16,957	38.3%	27,331	61.7%	44,288
1965-66	16,571	37.4%	27,792	62.6%	44,363
1966-67	15,633	35.7%	28,529	64.3%	44,362
1967-68	14,721	33.7%	29,005	66.3%	43,732
1968-69	13,624	31.6%	29,441	68.4%	43,065
1969-70	12,622	29.5%	30,097	70.5%	42,719
1970-71	17,203	35.8%	30,785	64.2%	47,988

CHESTERFIELD COUNTY SCHOOL SYSTEM
RACIAL COMPOSITION

[Richmond School Board's Exhibit No. 76 to District Court Proceedings of August 16, 1971]

CHESTERFIELD COUNTY SCHOOL SYSTEM
RACIAL COMPOSITION

School Year	No. White	Per Cent	No. Black	Per Cent	Total
1966-67	23,356	90.54%	2,443	9.46%	25,7
1967-68	25,129	90.20%	2,463	9.80%	25,1
1968-69	27,090	91.52%	2,513	8.48%	29,6
1969-70	28,897	92.10%	2,481	7.90%	31,3
1970-71	21,796	90.58%	2,267	9.42%	24,0

SOURCE: Chesterfield Answers to Interrogatories

1961-62	13,275	85.12%	2,321	14.88%	15,5
1964-65	21,919	90.40%	2,328	9.60%	24,2

1961-62 figures based on 1960 School Census data reported in Annual Report of Superi of Public Instruction.

1964-65 figures based on 1965 School Census data reported in Annual Report of Superi of Public Instruction.

25e

HENRICO COUNTY SCHOOL SYSTEM
RACIAL COMPOSITION (1960-71)

[Richmond School Board's Exhibit No. 77 to District Court Proceedings of August 16, 1971]

HENRICO COUNTY SCHOOL SYSTEM
RACIAL COMPOSITION
(1960-1971)

No. White	Per Cent	No. Black	Per Cent	Total
22,453	93.33%	1,606	6.67%	24,059
23,930	93.49%	1,667	6.51%	25,597
25,281	93.77%	1,680	6.23%	26,961
26,734	94.14%	1,666	5.86%	28,400
27,895	94.18%	1,726	5.82%	29,621
28,484	93.84%	1,871	6.16%	30,355
28,949	93.03%	2,169	6.97%	31,115
29,492	92.84%	2,276	7.16%	31,768
30,535	92.32%	2,542	7.68%	33,077
31,110	92.08%	2,679	7.92%	33,789
31,665	91.87%	2,805	8.13%	34,470

Henrico County Answers to Interrogatories

PUPIL POPULATION BY RACE—COMBINED SYSTEMS 1961-1971

[Richmond School Board's Exhibit No. 78 to District Court Proceedings of August 16, 1971]

PUPIL POPULATION
BY RACE
(Richmond, Chesterfield and Henrico)
1961-1971

School Year	No. White	Per Cent	No. Black	Per Cent	Total
1961-62	54,918	66.40%	27,813	33.60%	82,7
1964-65	66,771	68.03%	31,385	31.97%	98,1
1966-67	68,138	67.28%	33,141	32.72%	101,2
1967-68	69,345	67.27%	33,747	32.73%	103,0
1968-69	71,249	67.38%	34,496	32.62%	105,7
1969-70	72,652	67.33%	35,257	32.67%	107,9
1970-71	70,664	66.34%	35,857	33.66%	106,5

NOTE: 1961-62 and 1964-65 figures include School Census reports of Chesterfield C
all other figures are from Answers to Interrogatories

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COMPARISON OF METROPOLITAN AREA STUDENTS ATTENDING 20-40% BLACK SCHOOLS UNDER VARIOUS PLANS

[Richmond School Board's Exhibit No. 70 to District Court Proceedings of August 18, 1971]

1. Richmond students attending schools in the range of 20-40% Black under Plan III:

	% of Black Students	% of White Students
A. Elem. (K-5)	3.04%	9.43%
B. Middle (6-8)	9.2%	26.76%
C. High (9-12)	0%	0%

2. Henrico students (by race) presently attending schools in range of 20-40% Black:

	% of Black Students	% of White Students
A. Elem. (K-6)	14.7%	5.4%
B. Middle (7-9)	1.3%	.2%
C. High (10-12)	0%	0%

3. Chesterfield students (by race) presently attending schools in range of 20-40% Black:

	% of Black Students	% of White Students
A. Elem. (K-6)	34.24%	9.6%
B. Middle (7-9)	47.2%	7.6%
C. High (10-12)	0%	0%

I. Current Enrollment - 20-40% Schools

Presently in Henrico, Chesterfield and Richmond under Plan III, 5.99% of Black students attend schools in range of 20-40% Black.

6.45% of white students attend schools 20-40% Black.

II. Under proposed consolidated division, 97% of Black students would attend schools in range of 20-40% Black - (Remaining 3% would be in schools 15-2[illegible]%)

Under proposed metropolitan plan, 92.5% of white students [illegible] in range of 20-40% Black - (Remaining 7.5% would be in schools 15-2[illegible]% Black).

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REPORT OF PUBLIC ADMINISTRATION SERVICE, "A PLAN OF GOVERNMENT FOR THE RICHMOND REGION," DATED JANUARY 16, 1959

[Richmond School Board's Exhibit No. 89]

[I-16] * * *

City-County Migration

The migration of young white families from Richmond into the Counties is changing the racial characteristics of the City to the extent that nonwhite [I-17] school enrollment exceeded white school enrollment in Richmond for the first time in 1958. The nonwhite birth rate is also higher than the white birth rate in the City. School transfers reflect a net loss of white students in Richmond schools and a net gain of nonwhite students. The opposite effects are noted in the Counties.

[II-23] * * *

With the combined school enrollment of the two Counties rapidly approaching that of Richmond and the combined annual expenditures of the three school jurisdictions now in excess of $20 million, there is special need for achieving maximum economies in the management of the public education system of the Region. Administrative costs of the three systems total about $300,000 annually, or about $0.75 per capita.

[II-25] * * *

With each school operation going its separate way, optimum efficiency in management and best planning, location, and utiliaztion of the expensive school plants are difficult, if not impossible of achievement. Whatever may be the outcome of the current controversy over public education in Virginia, it does not seem likely that it will result

in the scrapping of the $60 million school plant that now exists in the Region, or in the discontinuance of its expansion and its need for unified management.

[III-9] * * *

Consolidation

Consolidation of governmental units for more effective administration has precedents in Virginia and is particularly applicable to the Richmond Region. Consolidation offers a means of bringing local units into combinations of larger size which can be effectively managed and can still provide responsiveness to the wishes of the residents of the area concerned.

[III-13] * * *

Conclusions

The Richmond Region today faces the need to rearrange its governmental structure so that public services may better meet its present requirements and future economic and social potential. Quite clearly its expanding population, growing industrial and commercial complex, and spreading residential areas have made and will continue to make an impact on the regional school program, health and welfare services, utility and public works operations, transportation services, and a host of public matters that cannot be conducted most effectively with methods and procedures designed for a simpler era.

* * *

REPORT TO HENRICO AND CHESTERFIELD COUNTIES BY SUA INCORPORATED, DATED JUNE 1, 1967

[Richmond School Board's Exhibit No. 47]

[I-3] * * *

Current trends and attitudes find their causes, most of which militate against inter-jurisdictional cooperation, in: an ambiguous State role in regional problems with heavy involvement in some, such as health, and a less than forceful activity in others, such as water pollution; the adversary roles required of the city and counties in the conduct of annexation proceedings; the lack of cooperation by the counties in assisting the city in its problems as they developed their programs and facilities; the city's failure to extend services or annex during initial growth periods and its policies and practices when offering such services following growth; and, the attitudes and practices of the counties and their residents that contributed to the high and growing percentage of Negroes in the central city.

[I-6] * * *

Recommendations

The recommendations of the Consultant are:

1. Secure legislative approval for and establish a multi-purpose district for the region to handle such functions as: regional planning; operation and expansion of the Richmond and Henrico water and sewer utilities and long-range needs of the region including Chesterfield's utilities; study and possible operation of transportation and transportation terminals; comprehensive regional planning; open space, regional parks and land uses; study and operation of refusal collection and disposal; air pollution control; industrial de-

velopment. The legislation should permit the district to expand functions and boundaries as the needs of the urbanizing area change.

[IV-1] * * *

The previous chapter has made a prognosis of future conditions if current trends and attitudes toward inter-jurisdictional cooperation are unchanged. It is the purpose of this chapter to: discuss the objectives and criteria underlying any discussion of local government and inter-governmental structures; to discuss the urban functions that may be performed on a local and area-wide basis; and. to discuss the alternative forms.

Objectives

Reasonable men could support most of the following values:

1. The central city is an essential element of the region as the major place of employment, the center of commerce, and the State Capital and consequently its problems affect the entire region. The other jurisdictions cannot dictate the affairs of the central city nor can they refuse to cooperate in the solution of its problems.

2. The counties are, or could soon be, self-sufficient in the basic governmental services they perform provided the elected representatives are willing to continue to impose the required taxes or charges and the taxpayers are willing to support them.

3. The counties' expenditures will draw closer to those of the central city but the central city's will always be proportionally higher due to congestion, density, concentration of low-income population segments, and older facilities.

4. With some additional tax sources and relief of the State-imposed welfare levels, the city has adequate financial resources for present levels but cannot reconstruct old facilities and, perhaps, meet increased service levels without substantial increases.

5. The jurisdictional boundaries of the three jurisdictions do not necessarily coincide with the living patterns of area residents or natural service areas. Many of the problems associated with urban areas cross over artificial boundaries and cooperative action or multi-jurisdictional programs must be mounted to cope with crime, disease, pollution, etc. Jurisdictional boundaries are not inviolate and should be changeable when warranted: however, decisions on issues should be non-political, referred to the affected residents with some means of reconciling local and general goals, and without emasculating the jurisdiction which loses territory.

[IV-2] 6. Without some changes in current practices and attitudes, certain conditions, such as pollution, will worsen and actions by another level of government may be warranted and inevitable.

7. Remedies for such conditions may be more effective when dealt with on a multi-jurisdictional basis and, in some cases, the technical and topographical solutions should over-ride the political considerations.

8. Such remedies should place a premium on mutual benefit, rather than on advantages to a single jurisdiction.

9. The principle of self-determination must be preserved; however, such determination must be reconciled to the need to participate in the solution of regional problems which may, in turn, require some loss of complete control of traditionally "local" functions.

[V-4] * * *

Consolidation

Consolidation is also a boundary-changing method in that two or more jurisdictions are merged into one. It has the advantage of merging capital assets, thereby eliminating questions of reimbursement, but without alleviating the inequities between the capital investments of the suburbs for new facilities and the central city's investments in [V-5] modernizing antiquated facilities. Consolidation broadens the area of planning and administration of a broad spectrum of services, thereby realizing the goals of coordination and economies of scale. Through the use of tax service areas, the urban and rural residents may be taxed according to the services they receive. One policy-making body theoretically retains control and accessibility but in practical terms the larger the government the more impersonal it becomes and this local government value may be more imagined than real.

It is the Consultant's opinion that consolidation would be the "idealized" solution for the Richmond region, but that, without a change in attitudes or a crisis of major proportions, it would not receive the necessary voter approval.

Consolidation cannot be advocated strongly on the basis of improving services in the counties. While economies of scale could provide the same, or slightly higher, levels of service at a lower over-all cost, the suburbanites might be willing to pay higher taxes and service charges to keep their governments smaller and independent. Until their taxes increase to the point where they demand consolidation, it must be assumed they are satisfied and outsiders cannot impose another governmental form to provide "better services at lower cost."

The argument, then, must turn on using consolidation to solve the problems of the central city. Although perhaps

shortsighted in terms of over-all regional goals, it is unlikely that suburbanites would feel compelled to vote their county governments out of existence to restore a racial balance or broaden the tax base or development area of the central city.

* * *

REPORT TO HENRICO AND CHESTERFIELD COUNTIES BY SUA INCORPORATED, DATED JUNE 12, 1967

[Henrico Board of Supervisors and School Board Exhibit No. 25]

[I-1] * * *

In the course of our study we have seen evidence of cooperation between the three jurisdictions in the solution of mutual and regional problems within the broad range of alternatives made available in enabling legislation. We have seen evidence of failure to cooperate in spite of the existence of severe problems. The necessity to assume the adversary roles demanded by annexation proceedings has been the major cause of the failure. Long pending annexation suits have prevented the planned development of utility services on a local or regional basis. County officials could not enter into long-term contracts for city utilities because of uncertain future costs for the services and the city's requirements on initial installation. In several cases the counties were thwarted in their attempts to develop utility services when city promises of lower costs, through contracts or merger, influenced the voting on sewer districts. Such instances have compounded the difficulty in arriving at joint action to improve conditions. Our aim is to describe the conditions and illustrate their possible worsening if present trends continue.

[I-2] * * *

The Evolution of Local Government in the Richmond Region

It is obvious that the distinction envisioned in the traditional city-county separation ceased to exist with population growth in the counties adjoining cities. The urban-

rural distinction between cities and counties dimmed as the county areas urbanized and the governments developed urban services to meet the needs of residential developments. The cities and counties are now more alike than different in the types of services and methods of financing. Although State legislation permitted many alternatives to expand city services or to enhance cooperation between cities and counties in the extension of services in the newly developing areas, greater reliance was placed on developing independent service and/or imposing increased demands on facilities inadequate for the new growth. The failure to "regionalize," as found in almost all other urban areas in the country, was due to: lack of forceful action by the State government; failure of the central city to annex or extend its services to the areas experiencing growth; and, the development of independent services by the counties.

[I-3] * * *

There is little evidence of any changes in attitudes or practices and with the construction of expressways and development of the suburban shopping centers, the reasonable expectation is that the growth will continue outward from the center. As these occur, the central city will have a higher concentration of Negroes, of disadvantaged and low income groups and its retail sales will not continue at their previous level.

[I-5] * * *

Conclusions

The conclusions of the Consultant are as follows:

1. There are three independent, substantially equal jurisdictions in the region. (The fourth, Hanover County contributes to the problems of the area through its rapid, if

spotty, urbanization, and should be included in any long-range planning. Similarly, the impact of the urban population in the Colonial Heights-Petersburg-Hopewell area on the Richmond region must be ascertained and included in long-range plans.)

2. The availability of legislation authorizing the use of various cooperative means has not stimulated sufficient cooperative action between the three jurisdictions.

[I-6] * * *

3. Means of stimulating cooperation among local officials must be developed in the form of new alternatives. However, the Consultant has investigated thoroughly and after serious evaluation has discarded the following as having doubtful application under current conditions to the Richmond-Henrico-Chesterfield region: voluntary metropolitan councils; consolidation; city-county separation; the urban county; federation; and limited purpose, metropolitan special districts.

4. Failure on the part of local officials to cooperate in regional programs will result in loss of federal funds and probably intervention by the State.

5. The central city would have sufficient revenue to continue present levels of service but should receive legislative approval to develop means of increasing revenues, or be relieved of some services that are of State-wide concern. The central city does not and will not, without outside assistance, have the financial capacity to re-develop blighted areas, replace antiquated public service facilities, and provide the present level of services to a population that contains an increasing proportion of low-income disadvantaged people.

6. The State and the adjoining counties cannot ignore the problems of the central city because of its importance to the economic vitality of the region and because of the fact that it is the State Capital.

[II-1] * * *

---

[1] In 1963 the Bureau of the Census included Hanover in the Richmond SMSA. The character of Hanover County, however, and the degree of interaction between that county and the central city (Richmond) differs significantly from that of both Chesterfield and Henrico Counties. Hanover is primarily rural and, judging from commuting patterns, depends less on the central city and the other counties in the SMSA than either Henrico or Chesterfield. Still, Hanover is a part of the SMSA and is expected to benefit from the growth of the Metropolitan area. For that reason many of the tables contained in appendix A include information for Hanover. For the most part, however, this analysis will be concerned with the other three jurisdictions in the SMSA: Richmond, Chesterfield County and Henrico County.

[II-2] * * *

Much of the change in levels of population in Henrico and Chesterfield has been due to the out-migration of Richmond city residents. Over half of the total population gain in Chesterfield between 1950 and 1960 was due to in-migration. In Henrico almost three out of four new residents were in-migrants and only one in four was added due to the excess of births over deaths. Not all of these migrants came from Richmond but it is safe to assume that a large proportion of them did. Richmond lost over 33,000 residents during this period as a result of the excess of persons leaving over those arriving.[2]

[II-3] * * *

Racial and Age Characteristics

Taken as a whole, the racial composition of the Richmond Metropolitan Area does not reflect national averages. The percentage of non-whites is higher than the national average but this percentage, again in contrast to national trends, is decreasing. For the twenty year period between 1940 and 1960 the proportion of the population comprised of non-white residents decreased by 2.2%. This is only a slight decrease, however, and reflects varying migration rates between white and non-white rather than differences in natural increase. It is interesting to note that of the four jurisdictions in the Richmond SMSA, only one, Henrico, shows a loss in the actual number of non-whites during this period.

The racial components of the City of Richmond reflect the pattern typical of the majority of SMSAs, an increase in the proportion of non-whites contained in the central city. Between 1940 and 1960 the percentage of non-whites in the city increased from 31.8% to 42%. Current estimates range between 50% and 55%. All of the other jurisdictions in the SMSA experienced decreases in the percentage of non-whites but both Chesterfield and Hanover showed increases in the actual number of non-whites. Again, this is a reflection of migration trends rather than an indication of a greater net natural increase on the part of the white population.

[II-7] * * *

Place of Work

Commuting patterns and the per cent of employment provided by each of the three study areas is indicated by "place of work" data reported in the 1960 census. Figures for that year indicate that 69.7% of the working population residing in Henrico were employed in the city of Richmond. Forty-six per cent of Chesterfield's working population was also employed in Richmond. The city provided employment for 91.8% of its own working residents. Both Chesterfield and Henrico provided employment for a substantial number of their citizens. Of the working population in Chesterfield and Henrico 38 percent and 22.4%, respectively, were employed in their home communities.

These employment commuting patterns have been used as evidence of a community of interest between Richmond and the surrounding counties. There is no doubt that the three jurisdictions are mutually dependent. Richmond feels that it provides the major source of employment for both Chesterfield and Henrico and the counties' residents have pointed out, with some justification, that their labor force keeps Richmond businesses in business.

[III-2] * * *

Social and Economic Disparities

The outward movement of people has been from the relatively higher income, white segment of the population. This has resulted in there being a disproportionate number of Negroes in Richmond. As the percentage of Negroes exceeds national averages another form of segregation is created and must be alleviated. The concentration of the disadvantaged and the economically deprived in a limited area and in intolerable housing prevents their rising out of such conditions. The dense concentration of any low-income, poorly educated group in decrepit housing multiplies the costs of governmental services.

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There is no one solution to this problem and much more than just money will be required. Decent housing must be made available and an important first step would be to remove the tax advantages in retaining slums. The property tax must be shifted to land and away from "improvements." There should be a tax incentive for new improvements rather than an advantage in retaining slums. At the same time, long-term, low interest loans should be made available. Programs involving government and private sources must be developed.

Much more must be done in education, from pre-school through high school education and vocational training. All officials and all levels of government must participate in the improvement of education for the Negroes and in developing employment opportunities that permit growth and full utilization of aspirations, education, and abilities.

A continually growing concentration of the Negroes without improvements in housing, education, and opportunities will further increase the disparities between the central city and the suburbs, making cooperative regional action more difficult in eradicating the disparities.

[III-4] * * *

Social and Economic Disparities

Henrico does not have a high percentage of low income families. The percentage of non-whites in the population is lower than the national average and lower than any other jurisdiction in the SMSA. In contrast to all other jurisdictions in the region, the number of non-whites in Henrico decreased between 1950 and 1960. If current trends continue, there seems little likelihood of any significant social or economic disparities between economic or racial groups within the County.

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[III-5] * * *

Social and Economic Disparities

Chesterfield has a very low percentage of lower income groups, though the percentage has been increasing. Due to the recent development of the County, most of the dwelling units are relatively new. There are few low rent facilities. For this reason, no significant change is anticipated in the number of low income families. For the same reason, the percentage of non-whites in the County is expected to remain almost constant.

[IV-2] * * *

All this is to say that as the percentage of non-whites in the core city *increases*, the possibility of effective cooperation to solve metropolitan problems *diminish*. In city-suburban racial imbalance and other measures of social distance, the Richmond area is worse off (the social distance between city and suburb is greater) than most other metropolitan areas in the State of Virginia, the southern region, and the United States as a whole.

[IV-3] Let us look at same measures of social disance.

A. Percentage of Non-Whites

In 1960, 42 percent of the City's population was non-white. This was by far the highest non-white percentage among Virginia's SMSAs; it is almost three times the median figure for metropolitan areas in the United States; and it is almost twice the median figure for the Southern region.

In contrast, the 1960 percentage of non-whites in the counties surrounding Richmond was only 10.4 percent. This

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figure was lower than the Southern regional figures. It was also 39 percent lower than that of the figure for the City of Richmond.

And there is every reason to believe that life in the Richmond metropolitan area is becoming *more* segregated with time, rather than less segregated. By that we mean non-white populations are continuing to be concentrated in the City of Richmond, and the small non-white percentages in Henrico and Chesterfield counties are likely to become even smaller with time as the white population in these counties continues to expand. At the present time there is little reason to believe that the State of Virginia or the U.S. Government is likely to adopt legislation, such as a "fair housing act," which would significantly alter this pattern of concentrating Negro housing in central cities and white housing in suburbs.

B. Education

The median education level in the City of Richmond in 1960 was 10.1 years. This figure, which increased only 0.2 years in the decade 1950-1960, was *lower* than every other Virginia SMSA except Lynchburg, was lower than the U.S. SMSA median and, more importantly, was lower than comparable levels for SMSAs in the Southern region.

In contrast, the median education level in Henrico and Chesterfield was 12.2 years in 1960. This level was the highest of the State's SMSAs, higher than the U.S. median, higher than the median level in the Southern SMSAs, and most importantly, was 2.1 years higher than the City of Richmond.

* * *

[IV-8] While the City's educational figure increased only 0.2 in the 1950-1960 period, Henrico's figure increased 1.2 years and Chesterfield's increased 2.0 years.

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The City had a smaller proportion of high school graduates than other Virginia cities, smaller than the average of all U.S. cities, and smaller than the average of all Southern cities. In contrast, Richmond's suburbs had a higher percentage of high school graduates than the suburbs of other Virginia cities, higher than the average of all U.S. schools, and higher than the average of all Southern suburbs.

[IV-8] * * *

Families earning less than $3000 per year are generally classified in the "poverty" category by the U.S. Office of Economic Opportunity. Nearly a quarter of the families in the City of Richmond fall within this category. This level of poverty is higher than the average for all U.S. cities and is comparable to other Southern cities. However, Richmond's suburbs have very few families in the "poverty" category—only about 6 percent. Richmond's suburbs have fewer "poor" than the average for the suburbs of all U.S. cities, all Southern cities, and all other Virginia cities.

[V-4] * * *

Reducing The Social And Economic Disparities

Governmental action alone cannot resolve all of the regional problems; all sections of the regional community must participate in the elimination of the social and economic disparities that exist between the central city and the suburbs. This is most lucidly illustrated by the failure of most public housing efforts to realize the perhaps too lofty expectations set for them. Educational opportunities must parallel housing improvements.

Multi-Purpose District

The Consultant believes that the multi-purpose district is, at the same time, the most feasible and most efficacious of

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all of the alternative forms for the Richmond area. This alternative has the major advantage of consolidating related functions of area-wide concern under one policy-making body and administrative structure. This permits greater coordination of plans and action in programs that are inter-jurisdictional in scope. Its effectiveness as a general purpose government depends on its ability to control a sufficient number of related programs and have the political and financial support to carry them out. It is especially important that its programs include the revenue as well as the non-revenue producing to insure that all related functions are covered.

[V-11] * * *

Although public education through high school should remain the responsibility of the individual jurisdiction, there are areas of cooperation that would serve to strengthen the educational programs. Of particular interest should be providing specialized programs requiring specialized teachers, facilities and equipment. A regional vocational educational facility provides an excellent example of this. Individual school systems can not provide the special skills and facilities required to anticipate and train students in the rapidly changing technologies. Acting jointly, the three jurisdictions could provide an excellent teaching facility for vocational students of the entire area while maintaining the close contact with employers to anticipate their needs and develop appropriate curricula. They can also pool resources for the special education programs required for the handicapped, mentally retarded and similar groups.

Through cooperative action, the three jurisdictions can more effectively provide a curriculum development center to enrich course offerings through teacher training, libraries of specialized materials, etc. Cooperative action can also

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lead to region-wide planning of community colleges and adult education.

Education is the most powerful tool available in reducing the social and economic disparities between our citizens. This important objective must be accepted by the public school officials and the teachers if the general well-being of the region is to be improved. Enormous outpourings of money, inspired teaching and enlarged opportunities are needed if the "spiral" of the economically deprived Negroes is to be broken. Only in that way, and perhaps only with two generations passing, can the pattern of succeeding welfare generations be broken. The public school officials and [V-12] teachers alone can not accomplish this, even with unlimited funds, and they deserve and need the support and assistance of all public officials and citizens. Such a massive effort is beyond the limitations of one school system and, because of the scope and regional importance, the three jurisdictions and the State government must cooperate in the planning and development of the educational programs, while retaining operational and administrative controls locally.

* * *

OPINION OF CIRCUIT COURT OF HENRICO COUNTY IN ANNEXATION PROCEEDINGS BETWEEN CITY OF RICHMOND AND COUNTY OF HENRICO, DATED APRIL 27, 1964

[Henrico Board of Supervisors and School Board Exhibit No. 7]

[p. 8] * * *

II. Community of Interests Between the City and the Area To Be Annexed.

Although community of interests is not necessarily as vital a consideration as other factors to be considered (See Newport News v. County of Warwick, trial court opinion of February 23, 1938, referred to in 46 Va. L. Rev. 1033), this Court nevertheless feels [p. 9] that this factor should be given consideration. Workers living in the County of Henrico and employed in the City of Richmond are bound by the necessity of loyalty, good citizenship and plain economics of living to be interested in the community in which they work. Both City Exhibits 54 and 55 and County Exhibit 116 agree and prove that approximately 66% of the County residents have their employment in the City of Richmond. This rate of employment is higher in the fringe areas in varying percentages according to the exhibits. County inhabitants purchase clothing and furniture and other items at city stores, use city streets, use hospitals located in the city, attend theaters and sports events, make use of parks, libraries and restaurants located in the city. Dependence of the central city of Richmond and the immediately surrounding county is mutual. (Record, pages 6111 through 6117). The evidence shows that the commercial and civic interests of the city and county are largely identical.

[p. 14] * * *

In reaching its conclusion as to the area to be annexed, the Court is of the opinion that no land is included which the City will not need in the reasonably near future for development, and that the land included is all that the City can expediently and financially develop in the reasonably near future. Virginia Code Section 15-152.12(a).

* * *

/s/ Joseph N. Cridlin
/s/ G. E. Mitchell, Jr.
/s/ Edmund W. Hening, Jr.

/s/ April 27, 1964

[Appendix Omitted in Printing]

* * *

ORDER OF ANNEXATION COURT IN PROCEEDINGS BETWEEN CITY OF RICHMOND AND COUNTY OF HENRICO DISMISSING MOTIN TO ANNEX TERRITORY TO THE CITY OF RICHMOND, ENTERED MAY 19, 1965

[Henrico Exhibit No. 7]

[Case Style Omitted in Printing]

This proceeding came on this day again to be heard upon the motion of the City of Richmond to annex territory to the City of Richmond pursuant to the ordinance adopted by the Council of the City of Richmond on December 26, 1961, a certified copy of which was served and published with the notice of motion, and upon the opinion of the Court rendered on April 27, 1964, the order entered on July 31, 1964, the opinion of the Court rendered on January 20, 1965, and the ordinance of the Council of the City of Richmond adopted on March 8, 1965, a certified copy of which is attached to the draft of this order, whereby the Council declined to accept the annexation of the territory proposed to be annexed to the City of Richmond on the terms and conditions imposed by the Court, as set forth in said opinions and order.

On consideration whereof, the Court approves the action of the Council of the City of Richmond declining to accept the annexation; and it is adjudged, ordered and decreed that the motion of the City of Richmond be and is hereby dismissed.

And the Court hereby directs the City of Richmond to pay the entire costs of this proceeding, including reimbursement of Henrico County of costs incurred by it in defending this proceeding, including such reasonable attorneys' fees, engi-

neering fees, witness fees and other costs as the Court shall determine and allow.

/s/ Enter: 5/19/65

/s/ Joseph N. Cridlin
/s/ G. E. Mitchell, Jr.
/s/ Edmund W. Hening, Jr.
/s/ Judges

We ask for this:

/s/ J. E. Drinard
J. E. Drinard, City Attorney,
City of Richmond, Virginia

/s/ J. S. Davenport, III
J. S. Davenport, III

/s/ David J. Mays
David J. Mays

Counsel for the City of Richmond

Seen:

/s/ William F. Parkerson, Jr.
William F. Parkerson, Jr.
Of Counsel For The
County Of Henrico

[Certificate of Service Omitted in Printing]

* * *

EXCERPTS FROM MINUTES OF STATE BOARD OF EDUCATION

[Richmond School Board's Exhibit No. 82]

* * *

Board Minutes
May 24, 1946

Regulations For The Operation Of Joint Schools For Counties And Cities

In accordance with provisions of Chapter 25, Senate Bill No. 42 of the Acts of the General Assembly, 1946, the Board adopted the following regulations for the operation of joint schools for counties and cities:

The management and control of schools jointly owned by the school boards of two or more counties or by the school boards of one or more counties and one or more cities shall be, if the respective school boards owning said school so provide by resolution, in accordance with the following plan:

1. There shall be a committee to be known as the joint committee for control of such joint school. When not more than two school boards own such joint school the committee for control shall consist of three members from each of the school boards jointly owning the joint school and each school board shall elect three of its members to be members of such committee for control; at the first election one member shall be elected for a term of one year, another member for a term of two years and a third member for a term of three years; and, thereafter, annually one member shall be elected for a term of three years. When three school boards own such joint school, the committee for control shall consist of two members from each of the school boards owning the joint school; at the first election, one member

shall be elected for a term of one year and another member shall be elected for a term of two years; and, thereafter, annually each member shall be elected for a term of two years. When more than three school boards own such joint school, the committee for control shall consist of one member from each of the school boards owning the joint school who shall be elected for a term of two years. The regular terms of the members of the committee for control shall commence on July first. Each school board shall fill vacancies which may occur in its membership on the said committee for control by election for the unexpired term. If for any cause a member of the committee for control ceases to be a member of the school board by which he was elected, he shall cease to be a member of the committee for control and his position on it shall be vacant. The committee for control shall elect from its membership a chairman who shall, if present, preside at all its meetings and a vice-chairman who in the absence of the chairman shall so preside. The Committee for control shall also elect a clerk who shall not be a member of the committee and who shall keep a record of all proceedings of the committee for control; such clerk shall execute bond with surety approved by the committee for control in such amount as the committee for control may fix conditioned upon the faithful performance of his duties as such clerk.

If at any time the membership of the committee for control shall be reduced below a quorum and the school board or school boards which originally filled the positions then vacant shall for thirty days fail to elect a sufficient number of members to constitute with other duly elected members then serving, a quorum, the duly elected members then serving, though less in number than a quorum of the joint committee, as herein contemplated, may take any action and make any decision which the entire joint committee for control, as herein contemplated, may take or make.

A majority of the committee for control shall constitute a quorum at any meeting and a majority of those present shall be necessary to a decision. Except as otherwise in this regulation provided, all meetings and procedure of the committee for control shall be in accordance with the provisions of section 655 of the Code of Virginia, which shall be applicable to the committee for control as if such committee for control were a school board within the meaning of said section.

Any action by the committee for control shall be action by the school boards jointly owning such school, within the provisions of section 667 of the Code of Virginia.

2. The committee for control as so constituted shall be authorized on behalf of the respective school boards owning such joint school to employ the teaching staff of such joint school and all necessary assistants, janitors and employees, to purchase supplies and to purchase, sell or dispose of equipment and appliances of such joint school, to determine policies concerning instruction for such joint school and to approve its curriculum in keeping with the general laws and regulations and requirements of the State Board of Education and to maintain and keep in repair the school buildings and in general to manage, operate and conduct said joint school and to suspend or expel pupils as provided in section 663 of the Code of Virginia. The respective school boards owning such joint school shall have no authority in respect to the maintenance and repair of school buildings and the management, operation and conduct of the joint school, but shall retain and have sole authority in all matters affecting the real estate and the construction and alteration of the school buildings and the improvement of the school grounds and the sole authority vested in them as provided in section 663 of the Code of Virginia, except the power to suspend or expel pupils from such joint school. No action

shall be taken in respect to the matters over which the school boards jointly owning such school retain authority unless all such school boards voting separately concur.

Teachers, assistants, clerks, janitors and other employees shall be elected and employed by the committee for control upon joint recommendation of the division superintendents appointed for the counties or cities of the respective school boards which own jointly the joint school. In respect to such joint school the division superintendents appointed for the counties or cities of the respective school boards shall jointly exercise the same authority which they have in the counties or cities for which they are respectively appointed and in the case of disagreement, except in respect to the recommendation of teachers, the matter shall be referred to the committee for control, whose action or failure to act shall be the final disposition of the matter, subject, however, to appeal as provided in section 667 of the Code of Virginia. Such division superintendents may, with the approval of the school boards owning such joint school, elect one of their number as executive officer in whom may be vested such authority of said superintendents, other than the recommendation of teachers, as they may from time to time find advisable.

3. It shall be the duty of the division superintendents of the school boards owning such joint school on or before the fifteenth day of March preceding the first scholastic year of such joint school and each year thereafter to prepare with the advice and approval of the committee for control, an estimate of the amount of money which will be needed during the next scholastic year for the maintenance and repair of the joint school buildings, for instruction at such joint schools and for the operation thereof, following so far as appropriate the forms furnished by the State Board of Education as provided in section 657 of the Code of Vir-

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ginia. The estimate so made shall clearly show all necessary details in order that the school boards owning such joint school may be well informed as to every item of the estimate.

In the annual budget estimate prepared by each division superintendent with the advice of each school board as required by section 657 of the Code of Virginia, a sum shall be included for administration, instruction, operation and maintenance of such joint school, giving details as required by said section, which sum, except as hereinafter provided, shall be not less than that fraction of the total estimate of such costs, which the average daily attendance during the preceding scholastic year at such joint school, of pupils residing within the county or city of such school board, is of the total average daily attendance during the preceding scholastic year at such joint school. But, if one of such school boards should find it necessary or advisable to provide for the joint school a lesser amount than the fraction of the total estimate, determined as aforesaid, the other school board or school boards may reduce in the same proportion the amount or amounts to be included in the annual budget or budgets by it or them for such costs.

For the first year of operation of such joint school, the fraction of the estimate of such costs and expenses of operation which each school board owning such joint school shall include in its budget estimate of expenditures for the ensuing fiscal year, subject to reduction as provided in respect to later appropriations, shall be that fraction which the average daily attendance during the preceding scholastic year, of pupils in the grades to be instructed at such joint school, of the city or county of such board, is of the total average daily attendance during such preceding scholastic year of pupils in said grades of all cities and counties whose school boards own such school.

4. Each school board owning such joint school shall annually at the first meeting after July first appropriate a

sum of money, as determined by the provisions in the preceding paragraph (3) of this regulation, for maintenance and repair of the joint school building, for administration and for instruction to be provided for such joint school and for operation of the same.

5. The amount so appropriated by each such school board shall be made available for expenditure by the committee for control upon request by the said committee, which, however, shall not request at any time a greater amount than the anticipated expenditures within the next succeeding sixty days. Such money shall be made available by payment to the treasurer or finance officer, authorized by law to receive and disburse tax funds, in which such joint school is located.

*(The third paragraph was amended and an additional paragraph added following paragraph "4.") (See minutes Aug. 9-10, 1946, page 62, this volume)

The committee for control shall receive and audit all claims arising from commitments made by it pursuant to authority conferred upon it by this regulation and by resolution and recorded vote approve and issue warrants on the treasurer or finance officer aforesaid into whose hands money shall have been paid as provided in this paragraph (5) in settlement of such claims as are found to be valid, which warrants shall have the same effect as warrants issued by the respective school boards and shall bear the dates on which the committee for control orders them to be issued and shall be made payable on demand, signed by the chairman or acting chairman of the committee for control, countersigned by the clerk or acting clerk of the committee for control, and recorded in the manner and form prescribed by the State Board of Education in respect to warrants issued by a school board, and such warrants may be converted to negotiable checks by the treasurer, or ap-

propriately designated deputy treasurer, or by the finance officer aforesaid, by affixing his signature thereto in accordance with the provisions of section 350 of the Tax Code of Virginia, and by designating thereon the bank on which each such warrant is to be paid.

The committee for control may provide also by resolution for the drawing of special warrants on the treasurer or finance officer aforesaid, in payment of compensation, when such compensation has been earned and is due, for (1) all employees under written contract, and (2) upon receipt of certified time sheets or other evidences of services performed, the payment of all other employees whose rates of pay have been established by the committee for control, which special warrants shall be signed by the clerk of the committee for control and countersigned by the chairman of the committee for control. Any special warrant so issued may be converted to a negotiable check in the manner hereinabove provided. Such payrolls shall be reviewed and approved by the committee for control at its next regular meeting.

The clerk of the committee for control shall on or before the 10th day of each month transmit to the clerks of the school boards owning such joint school an itemized statement of the receipts and disbursements during the preceding month, with a cumulative statement of all receipts and disbursements since the beginning of the current fiscal year.

* * *

Board Minutes
January 3, 1969

Establishment Of New School Divisions

On motion duly made and adopted the Board by a vote of five to one approved the following resolution providing for the establishment of new school division of Gloucester

County and a new school division of Mathews County, effective July 1, 1969:

The Gloucester County School Board has renewed its request for a separate school division, primarily to enable that county to employ a full-time resident superintendent. The Mathews County school board would prefer to continue the two counties in the same division, and has suggested that a full-time assistant superintendent assigned to Mathews might meet the situation.

The State Board of Education is convinced that the size of the administrative unit is usually a major factor in determining the scope and quality of the instructional programs and related services. Certain operating economies are also often related to size and total pupil enrollment. The State Board, therefore, has favored in principle the consolidation of school divisions with the view to creating administrative units appropriate to modern educational needs. The Board regrets the trend to the contrary, pursuant to which some counties and newly formed cities have sought separate divisional status based on political boundary lines which do not necessarily conform to educational needs.

Virginia law permits the combining of political subdivisions into single school divisions, and empowers the State Board of Education to establish such divisions. But the operation of schools at the local level is vested in county and city school boards, with boards of supervisors and city councils providing—as they should—the essential local component of school funds. In this situation, and under existing law, it has been impossible for the State Board of Education to effectuate a satisfactory consolidation program or even to assure that school divisions consisting of more than one political subdivision would operate in a manner which effects economies or results in genuine educational benefits.

The Mathews-Gloucester division is a classic case in

point. The two counties have constituted a consolidated school division in little more than name. There has been a common divisional superintendent, but there have been separate administrative offices and no common or joint personnel or facilities. The benefits of consolidation have thus been minimal.

It is true that some counties which operate together as consolidated school divisions have effected a more realistic basis of cooperation, sometimes to the point of sharing a single administrative office and with a number of jointly employed supervisory and administrative personnel. But these are matters for local and voluntary determination, and cannot be planned or assured by State Board of Education or indeed by the participating localities except on a transitory basis.

In view of the law as it now stands, the strong desire of the Gloucester authorities for a separate division, and the absence of any meaningful consolidation at the present time, the State Board concludes that Gloucester and Mathews Counties should be separated and a new school division established for each county effective July 1, 1969.

This resolution of the current problem does not represent an abandonment of the Board's policy position with respect to consolidation of school divisions nor does it preclude the Board from taking further action in light of such constitutional and statutory changes as may be effected in the future with respect to the establishment and consolidation of school divisions.

Governor Darden requested that he be recorded as voting "no." He expressed the feeling that the problem was largely administrative and that consolidation could be made to work.

* * *

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EXCERPTS FROM MEMORANDA OF STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

[Richmond School Board's Exhibit No. 83]

COMMONWEALTH OF VIRGINIA
STATE BOARD OF EDUCATION
RICHMOND, VIRGINIA 23216

SUPTS. MEMO. NO. 6058
June 29, 1971

: Division Superintendents

OM: Woodrow W. Wilkerson, Superintendent of Public Instruction
J. G. Blount, Jr., Assistant Superintendent for Administration and Finance

UBJECT: Establishment of School Divisions Effective Noon, July 1, 1971

By official action at its June meeting the State Board of ucation established school divisions as per the attached fective at noon, July 1, 1971.

Two or more school divisions wishing to employ the same ividual as superintendent should refer to Supts. Memo. 6044 dated June 11, 1971. This memorandum sets forth the hod for determining the basic salary of a part-time superin- dent and incorporates a portion of Section 22-37 of the Code Virginia requiring approval by the State Board for the loyment of a part-time superintendent.

Those school divisions desiring to employ the same individual superintendent must take official action on July 1 (following n) or as soon thereafter as is feasible. Each such division ool board should meet separately in taking the necessary action.

Each board appointing a part-time superintendent should nish this office with an appropriate excerpt of the minutes the meeting at which the appointment is made. Send these to G. Blount, Jr.

/lc

Attachment to
SUPTS. MEMO. NO.

SCHOOL DIVISIONS EFFECTIVE NOON, JULY 1, 1971

In compliance with the provisions of Section 22-30 of the Code of Virginia as amended by the General Assembly at its 1971 special session, the State Board of Education hereby divides the Commonwealth into school divisions as follows:

County School Divisions

Accomack	Cumberland	King and Queen	Prince Geor
Albemarle	Dickenson	King William	Prince Will
Alleghany	Dinwiddie	Lancaster	Pulaski
Amelia	Essex	Lee	Rappahannoc
Amherst	Fairfax	Loudoun	Richmond
Appomattox	Fauquier	Louisa	Roanoke
Arlington	Floyd	Lunenburg	Rockbridge
Augusta	Fluvanna	Madison	Rockingham
Bath	Franklin	Mathews	Russell
Bedford	Frederick	Mecklenburg	Scott
Bland	Giles	Middlesex	Shenandoah
Botetourt	Gloucester	Montgomery	Smyth
Brunswick	Goochland	Nansemond	Southampto
Buchanan	Grayson	Nelson	Spotsylvan
Buckingham	Greene	New Kent	Stafford
Campbell	Greensville	Northampton	Surry
Caroline	Halifax	Northumberland	Sussex
Carroll	Hanover	Nottoway	Tazewell
Charles City	Henrico	Orange	Warren
Charlotte	Henry	Page	Washington
Chesterfield	Highland	Patrick	Westmoreland
Clarke	Isle of Wight	Pittsylvania	Wise
Craig	James City	Powhatan	Wythe
Culpeper	King George	Prince Edward	York

Town School Divisions

Cape Charles	Fries	Saltville
Colonial Beach	Poquoson	West Point

City School Divisions

Alexandria	Emporia	Lexington	Roanoke
Bedford	Fairfax	Martinsville	Salem
Bristol	Falls Church	Newport News	South Boston
Buena Vista	Franklin	Norfolk	Staunton
Charlottesville	Fredericksburg	Norton	Suffolk
Chesapeake	Galax	Petersburg	Virginia Beach
Clifton Forge	Hampton	Portsmouth	Waynesboro
Colonial Heights	Harrisonburg	Radford	Williamsburg
Covington	Hopewell	Richmond	Winchester
Danville	Lynchburg		

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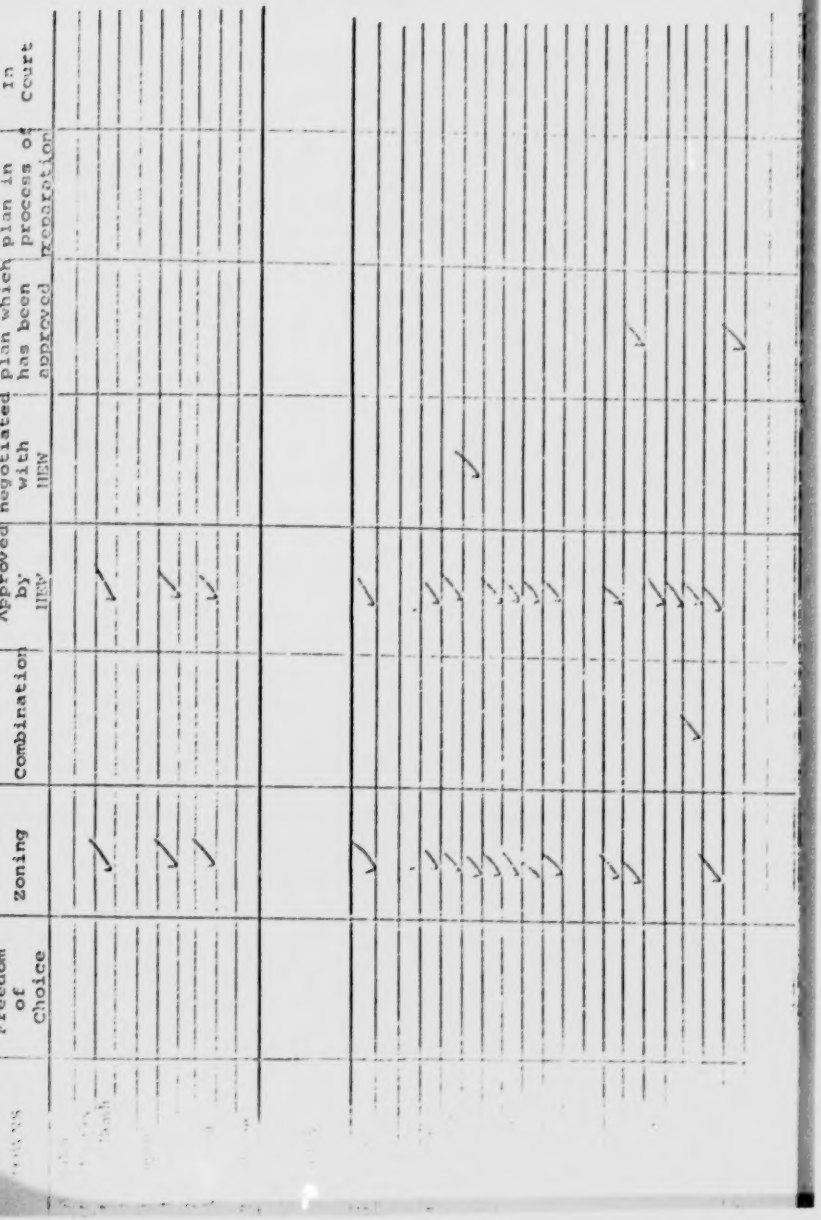
EXCERPTS FROM MEMORANDA OF STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

[Plaintiffs' Exhibit No. 122, pp. 368-69]

(Chart Dated September 8, 1970)



1								
CITY	Freedom of Choice	Zoning	Combination	Approved by HEW	Being negotiated with HEW	Court ordered plan which has been approved	Court ordered plan in process of preparation	In Court
Lexington		✓						
Lynchburg		✓						
Martinsville		✓		✓			✓	
Newport News	✓				✓			
Norfolk			✓					
Norton				✓			✓	
Petersburg		✓				✓		
Portsmouth		✓				✓		
Radford		✓						
Richmond				✓				
Roanoke		✓					✓	
Salem								✓
South Boston		✓		✓				
Staunton		✓		✓				
Suffolk		✓			✓			
Virginia Beach		✓		✓				
Waynesboro		✓		✓				
Williamsburg		✓		✓				
Winchester		✓		✓				
			✓					
TOTAL CITIES								
GRAND TOTAL								

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LETTER FROM DEPARTMENT OF JUSTICE TO LAWYERS TITLE INSURANCE COMPANY, DATED NOVEMBER 7, 1969

[Plaintiffs' Exhibit No. 90 to District Court Proceedings of August 20, 1971]

Department of Justice
Washington

November 7, 1969

Mr. George V. Scott, President
Lawyers Title Insurance Company
of Richmond, Virginia
3800 Cutshaw Avenue
Richmond, Virginia 23210

Dear Mr. Scott:

This Department has completed its investigation into allegations that Lawyers Title Insurance Company of Richmond, Virginia is engaged in a pattern and practice of resistance to the enjoyment of rights secured by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 *et seq.* The substance of the allegations is that the company includes in its title insurance policies restrictions based on race, color or national origin, where the real property to which the policies apply is subject to racial restrictive covenants. I am writing this letter to advise you of the results of our investigation, of this Department's view of the pertinent law, and of the steps which we believe the company is obliged to take to come into full compliance with Title VIII.

Our investigation has disclosed that it is the policy of your company to carry over into its title insurance policies racial restrictions included in documents of title to real property. As explained by company officials both to the FBI

and to state and local authorities, the basis for the company's position is that racial restrictive covenants have not been declared void by the United States Supreme Court, but are simply unenforceable by judicial sanctions. *Shelley* v. *Kraemer*, 334 U.S. 1 (1948); *Barrows* v. *Jackson*, 346 U.S. 249 (1953). Moreover, when it was suggested by the Montgomery County, Maryland Human Relations Commission that your company advise insured persons that the racial restriction is unenforceable, the company declined to do so, on the grounds that such statements might constitute the unauthorized practice of law. Furthermore on September 19, 1969, Mr. William Baker, Jr., general counsel for the company, advised agents of the FBI that no change in the issuance of title insurance policies was contemplated.

It is the view of this Department that the inclusion of racial restrictions in title insurance policies is in violation of Title VIII. Specifically, Section 804(c) of the Act, 42 U.S.C. 3604(c), provides in pertinent part that it shall be unlawful

> to make, print or publish, or cause to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, or national origin....

We believe that the plain language of the statute is applicable to racial restrictive covenants in general, and restrictions in insurance policies in particular. Our examination of the legislative history of the Act has disclosed that the sponsors of the legislation recognized that racial restrictive covenants had significantly contributed to racial segregation in housing and that the effects of these covenants had not been dissipated by the *Shelley* and *Barrows* decisions. Such legislative history as exists with respect to Section 804(c)

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discloses that the words therein are to be accorded their natural meaning, and that it was the purpose of the law to prohibit racially discriminatory statements in relation to the sale or rental of a dwelling. Accordingly, we are of the opinion that Section 804(c) in effect eliminated such vitality as racial restrictive covenants retained after *Shelley* and made all such covenants void, and their inclusion in documentes affecting title unlawful.

In addition to the foregoing, we believe that the inclusion of racial restrictions in title insurance policies has the inevitable effect of discouraging white persons from permitting Negro occupancy of dwellings subject to the restrictions, and of discouraging Negroes from attempting to secure title to affected properties. In view of the widespread use of racial restrictive covenants in all parts of this country, their continued inclusion in documents affecting title contributes significantly to the perpetuation of segregation in housing, which is the very evil which Title VIII was designed to avoid.

It is the responsibility of this Department, together with other federal agencies, to enforce the provisions of Title VIII, if necessary by the institution of legal proceedings in the appropriate United States District Court. It is our policy under appropriate circumstances, however, to attempt to secure voluntary compliance with the Act when this can be fully and promptly accomplished. Accordingly, I wish to advise you as to the views of this Department with respect to what the law requires of your company in order to come into full compliance with the law. The general principles which govern the appropriate relief in cases of racial discrimination were set forth by the Supreme Court in *Louisiana* v. *United States,* 380 U.S. 145, 154 (1965), wherein it was held that an appropriate decree would require the defendant to cease all discriminatory conduct and to take appropriate

affirmative steps to correct the continuing effects of past unlawful practices. Accordingly, we believe that your company has an obligation to eliminate from any policies to be issued or reissued in the future all racial restrictions of any kind whatsoever. In addition, in order to eliminate the continuing effect of these restrictions on holders of policies issued in the past, it is your company's responsibility to promptly advise all of its policy holders that any racial restrictions on their insurance policies are unlawful and void and have no effect whatsoever. The Company may also wish to consider such additional steps as may be appropriate to assure that all persons who may come into contact with insurance policies which include racial restrictions understand that such restrictions violate the law.

I would appreciate your advising me within ten days whether your company is prepared to undertake the steps described in this letter. Please do not hesitate to contact me, or Mr. Frank E. Schwelb, the Chief of the Housing Section of this Division, at any time. Mr. Schwelb can be reached at 202-386-3401.

Since Mr. William H. Baker, Jr., general counsel for your Company, explained your policies to the FBI, I am taking the liberty of sending him a copy of this letter.

Sincerely,

/s/ Jerris Leonard
Jerris Leonard
Assistant Attorney General
Civil Rights Division

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LETTER FROM DEPARTMENT OF JUSTICE TO STATE BOARD OF EDUCATION, DATED JULY 2, 1970

[Plaintiffs' Exhibit No. 96 to District Court Proceedings of August 24, 1971]

Department of Justice
Washington

July 2, 1970

State Board of Education of Virginia
% Dr. Woodrow W. Wilkerson
State Superintendent of Education
State Department of Education
Richmond, Virginia

Dear Dr. Wilkerson:

I am writing to you regarding the problem of state-imposed racial segregation which still exists in some public school systems in Virginia.

Under recent Supreme Court decisions, dual school systems must be terminated at once, and must operate hereafter as unitary school systems. Other court decisions have indicated that the State and its agencies have a responsibility to insure that its public school systems are operating on a fully desegregated basis.

In his March 24, 1970 statement, President Nixon summarized the present state of the law regarding school desegregation, stating, "There is a Constitutional mandate that dual school systems and other forms of *de jure* segregation be eliminated totally." He also stressed that "the Constitutional mandate will be enforced." This mandate will be carried out in a manner consistent with the policies set forth in the President's statement.

Under the Civil Rights Act of 1964 (42 U.S.C. 2000c-6), upon receipt of written complaints from parents to the effect that their children are being deprived of the equal protection of the laws on account of their race in the operation of the public schools, the Attorney General of the United States has a responsibility to seek compliance with constitutional standards. This letter it to notify you that the Attorney General has received such complaints from Virginia, that he is satisfied both that the complaints are meritorious and that the State Board of Education is the appropriate agency to be called upon to adjust the conditions of unlawful segregation and racial discrimination existing in the public school systems of Virginia, set forth in the attached list.

As you may know, the federal district court in Atlanta, Georgia has ordered the State Board of Education of Georgia to obtain from 81 school systems in that state constitutionally adequate desegregation plans which, upon approval by the court, are to be implemented at the beginning of the school term in the Fall of 1970. The court also invoked the cooperation and assistance of the Office of Education of the Department of Health, Education and Welfare. As a consequence of that court order, federal funds will be restored to those systems whose federal funds were previously deferred or terminated.

We think for a variety of reasons that the approach we have taken in the Georgia case is a sound one. While insisting on full compliance by all school systems beginning with the Fall term of 1970, which we must do, the approach allows considerable flexibility to the local school systems in the choice of means by which the end is to be achieved; it insures uniformity among local school systems in the timing of desegregation; and it avoids the need both for protracted litigation and for further termination of federal funds.

We are pleased with the progress thus far achieved in the Georgia case. We are hopeful that compliance in Virginia can be brought about by voluntary means rather than by

resort to the coercion of the courts. We therefore ask that you advise us as to whether all of the school systems listed in the attachment have committed themselves to full desegregation as of the beginning of the Fall term of 1970; and what procedures have been established to insure that such plans will be implemented at the beginning of the 1970-71 school year.

I am authorized to say that the Office of Education of HEW stands ready to assist the State Board and local boards in the preparation of desegregation plans. They have had considerable experience in this field, and I can assure you that they will approach problems with responsibility and understanding.

I am sending copies of this letter to the Governor, to the Attorney General and to the listed school districts.

Sincerely,

/s/ Jerris Leonard
Jerris Leonard
Assistant Attorney General
Civil Rights Division

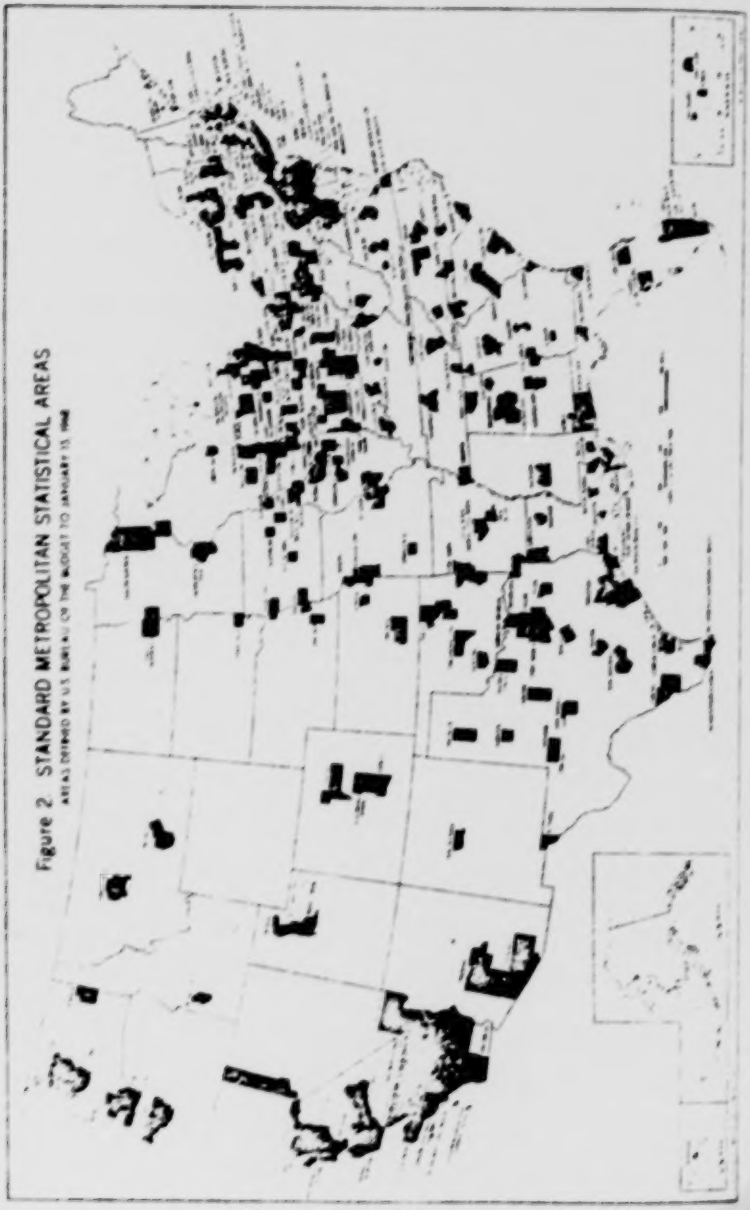
cc: Honorable A. Linwood Holton
Honorable Andrew P. Miller

[Attachment Omitted in Printing]

* * *

MAP OF U.S. STANDARD METROPOLITAN STATISTICAL AREAS, U.S. BUDGET BUREAU, JANUARY 15, 1968

[Plaintiffs' Exhibit No. 134]



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ENROLLMENT DATA FOR VARIOUS REGIONAL SCHOOLS FURNISHED BY STATE BOARD OF EDUCATION

[Richmond School Board's Exhibit No. 86 to District Court Proceedings of August 24, 1971]

	Christiansburg Industrial Institute	Manassas Regional High School	Carver Regional High School Culpeper
1940-41	201	392	
1941-42	203	394	
1942-43	183	348	
1943-44	190	388	
1944-45	190	412	482* (146 high)
1945-46	209	346	509* (164 high)
1946-47	218	340	501* (196 high)
1947-48	201	394	544* (234 high)
1948-49	212	515	443
1949-50	265	507	517
1950-51	246	555	475
1951-52	230	590	525
1952-53	292	494	539
1953-54	314	582	608
1954-55	314	226	633
1955-56	327	228	696

* Includes elementary enrollment.

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	Christiansburg Industrial Institute	Manassas Regional High School	Carver Regional High School Culpeper
1956-57	357	216	717
1957-58	336	242	689
1958-59	330	214	683
1959-60	325		678
1960-61	294		676
1961-62	300		685
1962-63	319		671
1963-64	309		756
1964-65	291		797
1965-66	169		745
1966-67			346**
1967-68			66**
1968-69			
1969-70			

	Jackson P. Burley Operated jointly by Charlottesville City and Albemarle County
1951-52	541
1952-53	561
1953-54	591
1954-55	566
1955-56	674

** Culpeper County enrollment only.

	Jackson P. Burley Operated jointly by Charlottesville City and Albemarle County
1956-57	677
1957-58	706
1958-59	704
1959-60	684
1960-61	702
1961-62	739
1962-63	809
1963-64	821
1964-65	867
1965-66	664
1966-67	371
1967-68	—

Manassas Regional High School—operated by Prince William, Fairfax, Rappahannock, and Fauquier Counties.

Christiansburg Industrial Institute—operated by Radford City, Pulaski and Montgomery Counties.

Carver—operated by Culpeper and Madison Counties. (Orange and Rappahannock joined in 1948).

In addition to the regional high schools, Williamsburg, Fredericksburg, and Bristol Cities operated schools which enrolled Negro students from adjacent areas on a tuition basis. (These are listed in Annual Reports of the Superintendent of Public Instruction as "Regional Schools.")

MEMORANDUM OF HARRY ELMORE OF STATE DEPARTMENT OF EDUCATION, RE: STATE'S ASSISTANCE IN SECURING HEW COMPLIANCE DATA

[Richmond School Board's Exhibit No. 87 to District Court Proceedings of August 26, 1971]

Commonwealth of Virginia
[Seal Omitted]

State Board of Education
Richmond 23216

March 19, 1969

Severenson—HEW—Request to Mr. Wingo that the Department secure the following information for the Justice Department through her office from Accomack, Nansemond, and Westmoreland:

1. Transportation data, such as maps, routes, boundaries
2. Data on student and faculty desegregation
3. Federal funds received from various Federal programs
4. Federal funds received since 1964 for buildings and real estate

Advice which I gave Mr. Wingo:

Call Severenson and suggest that requests be made in writing from Justice Department or her office to the divisions to furnish specific information, sending copies to Superintendent of Public Instruction. If the localities refuse, write Superintendent of Public Instruction requesting that our Department furnish the information. In this event, we would supply items No. 3 and No. 4 (public records) and say that we do not have No. 1 and No. 2, that the Department does

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not keep such detailed records, that the same are available only through the local school authorities.

Should Severenson insist that we secure the data from the local districts, state that the compliance agreements are between HEW and the local school districts, and if they refuse to supply Justice Department or HEW, our Department is not in position to coerce the districts into supplying the data. Coercive action should be applied by the Federal government for whatever ends are justified and lawful under the Civil Rights Act and Federal Regulation.

In addition, I hav he following thoughts:

The State Board's compliance agreement does not require our collecting data from the school divisions for transmittal to HEW. Our role with localities is to advise, consult, inform, and encourage compliance. We are required to submit information as may be requested by the Commissioner as it affects the Board's compliance in its Department operations.

The Guidelines (Regulations of HEW) require that localities submit supplementary information as may be requested by HEW.

I do not think it is sound, politically or otherwise, for the Department to assume the role of a coercive collection agency for the Federal goernment in instances where local school systems refuse to supply the information and are willing to forego Federal aid. The Federal government has ample authority to exercise over localities if it desires to institute suit through the Justice Department to place such localities under Court ordered desegregaion plans. It would be ill advised, in my judgment, for our Department to align itself with the Federal government in this confrontation with Accomack, Nansemond, and Westmoreland.

Harry Elmore /s/ H. E.

cc: Dr. W. W. Wilkerson
Mr. A. L. Wingo

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DATA ON EMPLOYMENT PRACTICES OF HENRICO AND CHESTERFIELD COUNTIES

[Plaintiffs' Exhibit Nos. 104, 105, 106, 107, and 107A-107C to District Court Proceedings of August 31-September 2, 1971]

COUNTY OF HENRICO

Employment

Positions Appointed by Board of Supervisors	Blacks	Whites
Board of Trustees for Patrick Henry Hospital	0	2
Highway Safety Commission	0	8
Library Board Trustees	0	5
Community Mental Health Service Board	1*	8
Board of Real Estate Revaluation & Equalization	0	5
Board of Public Welfare	0	3
Industrial Development Authority	0	7
Richmond Regional Planning District Commission	0	5
Plumbing Board	0	5
Electrical Board	0	5
Planning Commission	0	8
County Manager	0	1

*Appointed 7/28/70

Source: Answers of Henrico Board of Supervisors to Interregators, March 26, 1971

CHESTERFIELD COUNTY

Employment

Job Type	No. Black	% Black	No. White	% White
White Collar	7	2.38%	286	97.62%
Blue Collar	65	32.33%	136	67.67%

16.17% - Total number of Blacks employed by Chesterfield County

83.83% - Total number of Whites

SOURCE: Answers of Chesterfield Board of Supervisors to Inter

COUNTY OF HENRICO

Employment

Appointed by Board of Supervisors

White	62	98.42%
Black	1	1.58%
Total	63	100.00%

Appointed by Circuit Court Judge

White	8	100.00%
Black	0	0.00%
Total	8	100.00%

Elected Positions

White	8	100.00%
Black	0	0.00%
Total	8	100.00%

Source: Answers of Henrico Board of Supervisors to Interregators, March 26, 1971

COUNTY OF HENRICO

Employment

Positions Appointed by Circuit Court Judge	Black	White
Board of Zoning Appeals	0	5
Electoral Board	0	3

Elected Positions	Black	White
Sheriff	0	1
Commonwealth's Attorney	0	1
Clerk of Circuit Court	0	1
Board of Supervisors	0	5

Source: Answers of Henrico Board of Supervisors to Interregators, March 26, 1971

COUNTY OF HENRICO

Employment

WHITE COLLAR

96.86% of all jobs in administration are filled by whites

3.14% of all jobs in administration are filled by blacks

There are 615 whites in administrative jobs and 20 blacks in administrative jobs.

BLUE COLLAR

61.18% of all blue collar jobs are filled by blacks

38.82% of all blue collar jobs are filled by whites

There are 449 blacks in blue collar jobs.
There are 285 whites in blue collar jobs.

Source: Answers of Henrico Board of Supervisors to Interregators, March 26, 1971

COUNTY OF HENRICO

Employment

BREAKDOWN OF BUILDINGS BY RACE

Building	Whites	% White	Black
Main Office Building	161	97.58%	4
Glen Echo	29	90.63%	3
Dabbs House	205	99.52%	1
Courthouse	58	95.09%	3
Fire Office	107	97.28%	3
School Board	26	89.66%	3
Library	37	86.05%	6
Public Works	56	37.59%	93
C & M (Maids & Janitors)	111	29.45%	266
Public Utilities	65	46.67%	73
Equipment Depots	22	73.33%	8

Source: Answers of Henrico Board of Supervisors to Interre
March 26, 1971

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CHESTERFIELD COUNTY

Employment

Race Black	Office or Dept.	Location of Office	% Black	Race Other Than Black or White
0	Board of Supervisors	Chesterfield, Va.	0	
0	Treasurer's Office	Chesterfield, Va.	0	
0	Office of Exec. Sec'y.	Chesterfield, Va.	0	
0	Planning Dept.	Chesterfield Courthouse	0	
0	Circuit Court	Chesterfield, Va.	0	
0	County Court	Chesterfield, Va.	0	
1*	Library		3.33	East Indian
0	Voter Registration	General Registrar Chesterfield Courhouse	0	
0	Probation Dept.	Chesterfield Courthouse	0	
0	Ches. Col. Hts. Dept of Social Services	Chesterfield, Va.	0	
0	Ettrick Sanitary Dist.	98 Chesterfield Ave. Ettrick, Va. 23802	0	
0	Real Estate Assessor	Chesterfield, Va.	0	
0	Data Processing	Chesterfield Courthouse	0	
0	Central Accounting Dept.	Chesterfield, Va.	0	
1	Agri. & Home Economics	Federal Bld., Chester	50	
0	License Inspector	Chesterfield, Va.	0	
0	Building Inspector	Chesterfield, Va.	0	
0	Commissioner of Revenue	Chesterfield, Va.	0	
1*	Sheriff's Office	Chester. Sheriff's Off.	5.55	

Janitor in Admin. Office
Jail Cook

SOURCE: Answers of Chesterfield Board of Supervisors to Interrogatories

CHESTERFIELD COUNTY

Race		Office or Dept.	Location of Office	% Black
White	Black			
71	0	Police	Chesterfield Courthouse	0
22	0	Fire Dept.	Fire Admin. Chesterfield Courthouse, P. O. Box 40, Chesterfield, Va.	0
8	0	Nursing Home (Admin.)	Chesterfield County Nursing Home	0
2	5	Nursing Home (Housekeeping)	Chesterfield County Nursing Home	71.42
0	3	Nursing Home (Laundry)	Chesterfield County Nursing Home	100
4	5	Nursing Home (Kitchen)	Chesterfield County Nursing Home	55.55
57	32	Nursing Home (Nursing Div.)	Chesterfield County Nursing Home	35.95
10	0	General Services	Chesterfield Courthouse	0
93	20	Utilities	Courthouse	17.69
4	10	Bldg. Maintenance	Chesterfield Courthouse	71.42
6	5	Sanitation	Chesterfield Courthouse	45.45

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HENRICO COUNTY ZONING CLASSIFICATION BY ACREAGE

[Henrico Exhibit No. 16]

Henrico County

Total Acres Zoned (corrected)

Zoning Classifications	*Acres Zoned*	
R-0	1,091.73	
R-1	3,162.56	
R-2	4,476.32	
R-2A	5,525.30	
R-3	13,319.40	
R-4	6,261.82	
R-5	2,862.56	
R-6	313.33	
RTH	275.70	
RPN	152.00	
B-1	707.36	
B-2	787.94	
B-3	1,858.96	
M-1	3,278.39	
M-2	6,907.30	
M-3	129.53	
A-1	93,047.24	
C-1	11,470.78	
RMP	9.24	
PMD	135.86	
	155,773.54	Total Acres Zoned in Henrico County

/s/ W. F. LaVecchia
W. F. LaVecchia
Director of Planning

LOSE IN CENTER

AFFIDAVIT OF HAROLD F. SNEAD

[Henrico Exhibit No. 17]

State of Virginia:
City of Richmond, To-wit:

This day personally appeared before me /s/ Lillian P. Cersley, a Notary Public in and for the City aforesaid, in the State of Virginia, the Honorable Harold F. Snead, who upon being duly sworn, deposes and says:

(1) That from February 18, 1948, to January 14, 1957, he was the Judge of the Circuit Court of Henrico County.

(2) That he does not recall that during his tenure as Judge of the Circuit Court of Henrico County, any suit was adjudicated in said Court, in law or in equity, enforcing any racially restrictive covenant relating to any real property in Henrico County or awarding damages for breach of any such covenant.

/s/ Harold F. Snead
Harold F. Snead

[Jurat Omitted in Printing]

* * *

AFFIDAVIT OF HELEN C. LOVING

[Henrico Exhibit No. 18]

State of Virginia:
County of Henrico, To-wit:

This day personally appeared before me Margaret B. Baker, a Notary Public in and for the County aforesaid, in the State of Virginia, Mrs. Helen C. Loving, who upon being duly sworn, deposes and says:

(1) That she is the Clerk of the Circuit Court of Henrico County, Virginia, and has held that office since October 12, 1943.

(2) That from October 7, 1936, to October 12, 1943, she was the Deputy Clerk of the said Circuit Court of Henrico County.

(3) That during her tenure as such Clerk and Deputy Clerk, to the best of her knowledge and belief, no suit was adjudicated in said Court, in law or in equity, enforcing any racially restrictive covenant relating to any real property in Henrico County or awarding damages for breach of any such covenant.

/s/ Helen C. Loving
Mrs. Helen C. Loving, Clerk
Circuit Court of the County of Henrico

[Jurat Omitted in Printing]

* * *

HEW CORRESPONDENCE WITH HENRICO SCHOOL SUPERINTENDENT

[Henrico Exhibit No. 26-A]

Region III
220 Seventh Street, N.E.
Charlottesville, Virginia 22901

Office For Civil Rights
November 28, 1969

. W. E. Campbell
perintendent
nrico County Schools
st Office Box 40
ghland Springs, Virginia 23075

ar Dr. Campbell:

Thank you for the cooperation extended to Dr. W. nneth Haddock of my staff during his visit to your school ision on October 16.

According to his report, you are now operating a unitary, nracial school system in which no schools are racially ntifiable. You, your school board, and your staff are to commended for the leadership you have shown in meet- the provisions of Title VI of the Civil Rights Act of 64 and, even more important, providing an equal educa- nal opportunity for all of the students in your school ision.

We note that Central Gardens appears to be moving in direction of becoming an all-Negro school, owing to the ial composition of its attendance zone. Please keep us rmed of steps you may take to avoid the possibility of s school becoming resegregated in both student body and ulty. School boards and administrations have a continuing

responsibility, once a school division has been desegregated, to maintain it as such.

In accordance with the procedures of our office, your 441-B, Assurance of Compliance, will remain in effect and provide a basis for the approval of applications and for payment of Federal financial assistance. You will be requested to submit information of student enrollment and faculty assignment by race for the 1970-71 year after school opens next year. At that time, you will be requested to return the report forms (OS/CR 101 and 102) along with a letter stating: (a) you have maintained full compliance and request 441 status; (b) your school division understands and acknowledges its obligation under Title VI to ensure that the construction, and rehabilitation of schools in your system will be made in accordance with the objectives of your plan and the requirements of Title VI; and (c) provide information concerning the teacher recruiting program, indicating the colleges visited, teachers interviewed, and teachers hired, by race. In addition, your letter should be accompanied by an executed HEW Form 441. Assurance of Compliance.

If the information contained in the compliance forms for the coming year shows that full compliance has been maintained, your form 441 will be accepted.

We look forward to receiving your reports in the coming school year. If we can assist you in any way, please do not hesitate to call upon us.

Sincerely yours,

/s/ Eloise Severinson
Eloise Severinson, Ph.D.
Regional Civil Rights Director

cc: Honorable Woodrow W. Wilkerson
Chief State School Officer

HEW CORRESPONDENCE WITH HENRICO SCHOOL SUPERINTENDENT

[Henrico Exhibit No. 26-B]

Region III
Post Office Box 12900
Philadelphia, Pennsylvania 19108

Office For Civil Rights
December 10, 1970

Dr. W. E. Campbell
Superintendent of Schools, Henrico County
Post Office Box 40
Highland Springs, Virginia 23075

Dear Dr. Campbell:

Thank you for the courtesies extended to Mr. James Wego of my staff during his recent visit to your school division.

Mr. Wego's report indicated that your division has operated in accordance with your 1969-70 terminal desegregation plan for the past school year. Furthermore, he reported that you have reopened the formerly all-Negro schools, closed as a part of your terminal plan, as desegregated facilities.

The Central Gardens Elementary School continues to house a virtually all-Negro student body but does have a substantially desegregated faculty which is predominantly white. It is my understanding that due to the division's growth patterns in both student population and building construction there is a likelihood that some redistricting of school zones will take place next year. We would like to take this opportunity to call your attention to the division's continuing responsibility to utilize every feasible means to further remove the racial identifiability of the Central

Gardens student body and prevent this school from becoming all-Negro, with reference to the student body. The redistricting of school zones may well allow for substantial desegregation of this particular school. Please keep our office informed of any future action which may have Title VI implications.

One concern which we share, I trust, is the small number of minority group professional staff in your school system, approximately four per cent. We urge you to actively continue to recruit and employ minority group staff at all levels of responsibility.

Based on our findings, your school division is eligible to submit HEW Form 441, Assurance of Compliance, copies of which are enclosed. Upon proper action by your school board and the return of the forms to our office, we shall immediately make the change in your compliance status. Form 441 will serve as a satisfactory assurance of your division's compliance with the nondiscrimination requirements of Title VI. The assurance accordingly provides the basis for approval of applications and for payment of Federal financial assistance.

This office wishes you well as you endeavor to bring about quality education in Henrico County.

Sincerely yours,

/s/ Eloise Severinson
EHK
Eloise Severinson, Ph.D.
Regional Civil Rights Director

* * *

HEW CORRESPONDENCE WITH HENRICO SCHOOL SUPERINTENDENT

[Henrico Exhibit No. 26-C]

Region III
Post Office Box 12900
Philadelphia, Pennsylvania 19108

Office For Civil Rights
January 29, 1971

Dr. Walter E. Campbell
Superintendent of Schools
Henrico County Schools
P. O. Box 40
Highland Springs, Virginia 23075

Dear Dr. Campbell:

This will acknowledge receipt of the HEW Form 441, and the Assurance of Compliance with the Department of Health, Education and Welfare Regulation under Title VI of the Civil Rights Act of 1964, executed on behalf of your school system.

Information available in this office indicates your district has maintained full compliance in operation, and it appears that Form 441 is a satisfactory assurance of your school system's compliance with the nondiscrimination requirements of Title VI. The assurance accordingly provides the basis for approval of applications and for payment of Federal financial assistance.

In accordance with Section 80.6 and 80.7 of the Department's Regulation (45 C.F.R. 80) your school system may be asked to provide reports and its practices may be reviewed to determine continued compliance with Title VI.

We appreciate the effort and cooperation you have shown

in assuring equal educational opportunity under Title VI. If there is any way we may be of further assistance, please do not hesitate to call upon us.

Sincerely yours,

/s/ Eloise Severinson—NV
Eloise Severinson, Ph.D.
Regional Civil Rights Director

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HEW CORRESPONDENCE WITH HENRICO SCHOOL SUPERINTENDENT

[Henrico Exhibit No. 26-D]

Region III
Post Office Box 12900
Philadelphia, Pennsylvania 19108

Office For Civil Rights
April 20, 1971

Dr. Walter E. Campbell
Superintendent of Schools
Henrico County Public Schools
P. O. Box 40, Highland Springs
Henrico County, Va. 23075

Dear Dr. Campbell:

As you may know, the courts now generally hold that in order to be fully desegregated, a school district must assign its faculty and staff so that the ratio of minority to majority group personnel in each school is substantially the same as the ratio throughout the school district. This was pointed out most recently in the memorandum from the Director of the Office for Civil Rights to Chief State School Officers and School Superintendents dated January 14, 1971 (Subject: Non-discrimination in Elementary and Secondary School Staffing Practices.), a copy of which is enclosed for your convenience.

We have just completed an evaluation of the compliance report forms (OS/CR 101-1 and 101-2) submitted by your school district relating to compliance under Title VI of the Civil Rights Act of 1964. These reports show that your district has not yet assigned its faculty and staff according to the provision set forth above (and in the January 14 memorandum).

A specific provision for such assignments was not included in your desegregation plan which was accepted on December 10, 1970. In light of current legal requirements, however, we must require that your faculty and staff assignments be made as promptly as possible, and that you inform us, of such assignments and when they will be implemented. We request this information no later than 15 days after receipt of this letter.

In describing your new assignment plan, for each school in your district please provide the name, race, and position (e.g. principal, 7th grade math teacher, etc.) of each currently employed faculty and staff member in that school, and indicate to which school and position each will be assigned for the 1971-72 school year. If currently employed personnel are not returning, state the reason (e.g. dismissed, retired, etc.). With regard to newly hired faculty and staff (i.e. not currently employed by your district), please also provide the name, race, and the school and position to which each will be assigned for the next school year. If currently employed or newly hired personnel have not been assigned to schools and positions at the time your district submits its new assignment plan, please indicate the reasons that such assignments have not been made. Also describe any faculty or staff vacancies which may exist for the next school year to which no personnel—currently employed or newly hired—have been assigned so that a supplementary report of the kind described above can be made later.

Sincerely yours,

/s/ Eloise Severinson
Eloise Severinson, Ph.D.
Regional Civil Rights Director

* * *

HENRICO SCHOOL SUPERINTENDENT CORRESPONDENCE WITH HEW

[Henrico Exhibit No. 26-E]

May 13, 1971

Dr. Eloise Severinson
Regional Civil Rights Director
Department of Health, Education, and Welfare
Region III
P. O. Box 12900
Philadelphia, Pennsylvania 19108

Dear Dr. Severinson:

Acknowledgement is made of your April 20 letter in which you refer to the assignment of faculty and staff so that the ratio of minority to majority group personnel in each school is substantially the same as the ratio throughout the school district.

You may recall from past correspondence that we will be occupying new schools and additions for the next school session. We are now in the process of re-assigning teachers in accordance with the new facilities. As soon as we complete this work we will send you the information you requested in your letter.

Please note that a large part of meeting the ratio involves re-assignment of the black teachers at Central Gardens Elementary School. These teachers have already been reassigned for the next school session or have been informed that they will be re-assigned.

In addition, we have conducted a rather vigorous campaign to recruit additional black teachers. In this regard

we feel that we have achieved some success but will not know the actual results until later.

Sincerely,

/s/
W. E. Campbell
Superintendent

* * *

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HENRICO SCHOOL SUPERINTENDENT CORRESPONDENCE WITH HEW

[Henrico Exhibit No. 26-F]

May 26, 1971

Dr. Eloise Severinson
Regional Civil Rights Director
Department of Health, Education, and Welfare
Region III
P. O. Box 12900
Philadelphia, Pennsylvania 19108

Dear Dr. Severinson:

Reference is made to your letter to me dated December 10, 1970 in which you state the following: "We would like to take this opportunity to call your attention to the division's continuing responsibility to utilize every feasible means to further remove the racial identifiability of the Central Gardens student body and to prevent this school from becoming all-Negro, with reference to the student body. This redistricting of school zones may well allow for substantial desegregation of this particular school. Please keep our office informed of any future action which may have Title VI implications."

When Dr. James K. Wego of your office visited our school division last November I informed him that completion of our new school construction program would require redrawing of school zones.

At its meeting last Thursday the school board approved new elementary school zones, including desegregation of the Central Gardens student body. In order to accomplish this desegregation four additional schools have been used—Ratcliffe Elementary, Glen Lea Elementary, Jacob L.

Adams Elementary, and Highland Springs Elementary. Enclosed you will find a description of the zones for each of these schools. You will note that the plan establishes the beginning of a middle school, which is needed in the eastern end of the county, at Central Gardens.

The approved organization for next year has been given considerable study by the staff and we are of the opinion that the organization meets the legal requirements and at the same time establishes a basis for improvement of the educational opportunities for the boys and girls affected by the reorganization of the above five schools.

The organization has been discussed with representatives of the Consultative Resource Center on School Desegregation of the University of Virginia and these representatives concur with our staff in the above conclusion.

Sincerely,

/s/ W. E. Campbell
W. E. Campbell
Superintendent

* * *

HEW CORRESPONDENCE WITH HENRICO SCHOOL SUPERINTENDENT

[Henrico Exhibit No. 26-G]

Region III
Post Office Box 12900
Philadelphia, Pennsylvania 19108

Office For Civil Rights
June 30, 1971

Dr. W. E. Campbell
Superintendent of Schools
Henrico County Public Schools
Post Office Box 40
Highland Springs, Virginia 23075

Dear Dr. Campbell:

Thank you for your letter of May 13, 1971, in which you advised that you were then in the process of reassigning teachers for the 1971-72 school term. We understand that you will forward your projected faculty assignments to us by August 1, 1971.

Thank you also for your letter of May 26, 1971, in which you advise that effective with the opening of the 1971-72 school term Central Gardens will house sixth grade students in the eastern end of the county and in future years will be a middle school for this area.

In moving to this organization, students in grades 1-5 in the Central Gardens zone will attend four schools: Ratcliffe, Glen Lea, Jacob L. Adams and Highland Springs. These schools will be feeder schools for Central Gardens. The projected enrollment which you furnished shows that all five schools will be from 69 to 81 per cent white.

This organization appears to meet the requirements of your continuing responsibility to remove the racial identifiability of Central Gardens as referred to in our letter of December 10, 1970. It also is in accord with the principles enunciated by the Supreme Court on April 20, 1971, in the case of *Swann vs. Charlotte-Mecklenburg.*

We appreciate the leadership you have shown and look forward to receiving your faculty information.

Sincerely yours,

/s/ Eloise Severinson
Eloise Severinson, Ph.D.
Regional Civil Rights Director

* * *

HENRICO SCHOOL SUPERINTENDENT CORRESPONDENCE WITH HEW

[Henrico Exhibit No. 26-H]

July 30, 1971

Dr. Eloise Severinson
Regional Civil Rights Director
Region No. 3
P. O. Box 12900
Philadelphia, Pennsylvania 19108

Dear Dr. Severinson:

Please find attached the roster of personnel for Henrico County Schools for the 1971-72 session and the list of personnel terminating their employment with Henrico County during and at the end of the 1970-71 session. It is appropriate to point out the following major changes which will show considerable progress in including members of the minority races on our professional staff.

1. During the school session 1970-71 Henrico County employed a total of 63 Negro teachers. For the school session 1971-72, as of July 30, 1971, the county has employed 87 Negro teachers.

2. During the school session 1970-71, Henrico County had five schools that did not have an integrated faculty. For the school session 1971-72, all forty-three school faculties will be integrated.

3. The school board has recently employed a Negro, Mr. Lloyd E. Jackson, Jr., as Assistant Director of Elementary Education. This, of course, is a position on

our central administrative staff. Mr. Jackson was formerly an elementary supervisor on our staff.

4. In summary, Henrico County now has employed for the 1971-72 session 94 black staff members as compared to 70 for the 1970-71 session.

At the present time, we have approximately ten or twelve vacancies in order to complete our teaching staff for the 1971-72 session. We have fifteen people who are now on letter of intent to employ, but definite openings have not yet developed for which they can be placed. One of this group to which we are committed is a Negro elementary teacher.

I trust that you will find this report satisfactory.

Sincerely,

/s/
W. E. Campbell
Superintendent

* * *

HEW CORRESPONDENCE WITH HENRICO SCHOOL SUPERINTENDENT

[Henrico Exhibit No. 26-I]

Region III
Post Office Box 12900
Philadelphia, Pennsylvania 19108

Office For Civil Rights
August 11, 1971

Dr. W. E. Campbell
Superintendent
Henrico County Public Schools
P.O. Box 40
Highland Springs, Virginia 23075

Dear Superintendent Campbell:

Thank you for your letter of July 30, 1970 enclosing your roster of personnel for the 1971-72 school session.

It appears that your assignments do approximate the *Singleton* ratio insofar as it is statistically possible to do so with the number of minority teachers in your division.

The appointment of Mr. Jackson, one of three Negroes on your administrative staff of 134 persons, as Assistant Director of Elementary Education is certainly a constructive step. We note also your assignment of Negroes to all of your schools and the increased success you are having in recruiting Negroes.

We commend your efforts and hope that you will continue a vigorous program to recruit and upgrade minority faculty and staff.

Sincerely yours,

/s/ Eloise Severinson /SN
Eloise Severinson, Ph.D.
Regional Civil Rights Director

* * *

FHA MEMORANDUM DATED MARCH 5, 1971

[Henrico Exhibit No. 27]

United States Government
Memorandum

Date: 5 Mar 1971

To: William T. Stansbury, Assistant Regional Administrator, Philadelphia, Pennsylvania

From: William B. Dockser

Subject: Rent Supplement Program
Local Official Approval

This is in reply to your captioned memorandum of February 19, 1971, concerning the acceptability of resolutions for participation in the Rent Supplement Program adopted by governing bodies that limit the number of units and/or restrict the approval to certain designated sites.

The resolution adopted by the City Council of Harrisonburg, Virginia (copy of which was attached to your memorandum) is acceptable. Local governing bodies may restrict rent supplement participation to a particular number of units or a particular site. However, whenever possible a non-restricting resolution would be preferable. This would permit the future development of rent supplement projects without the necessity of obtaining an amended or new resolution.

Attached is a copy of MF-101, dated April 3, 1967, with an attached suggested Form of Resolution by a Local Governing Body. This is evidently the model form of certification used by the City Council of Harrisonburg.

/s/ Robert Cunningham
Assistant Commissioner for
Subsidized Housing

* * *

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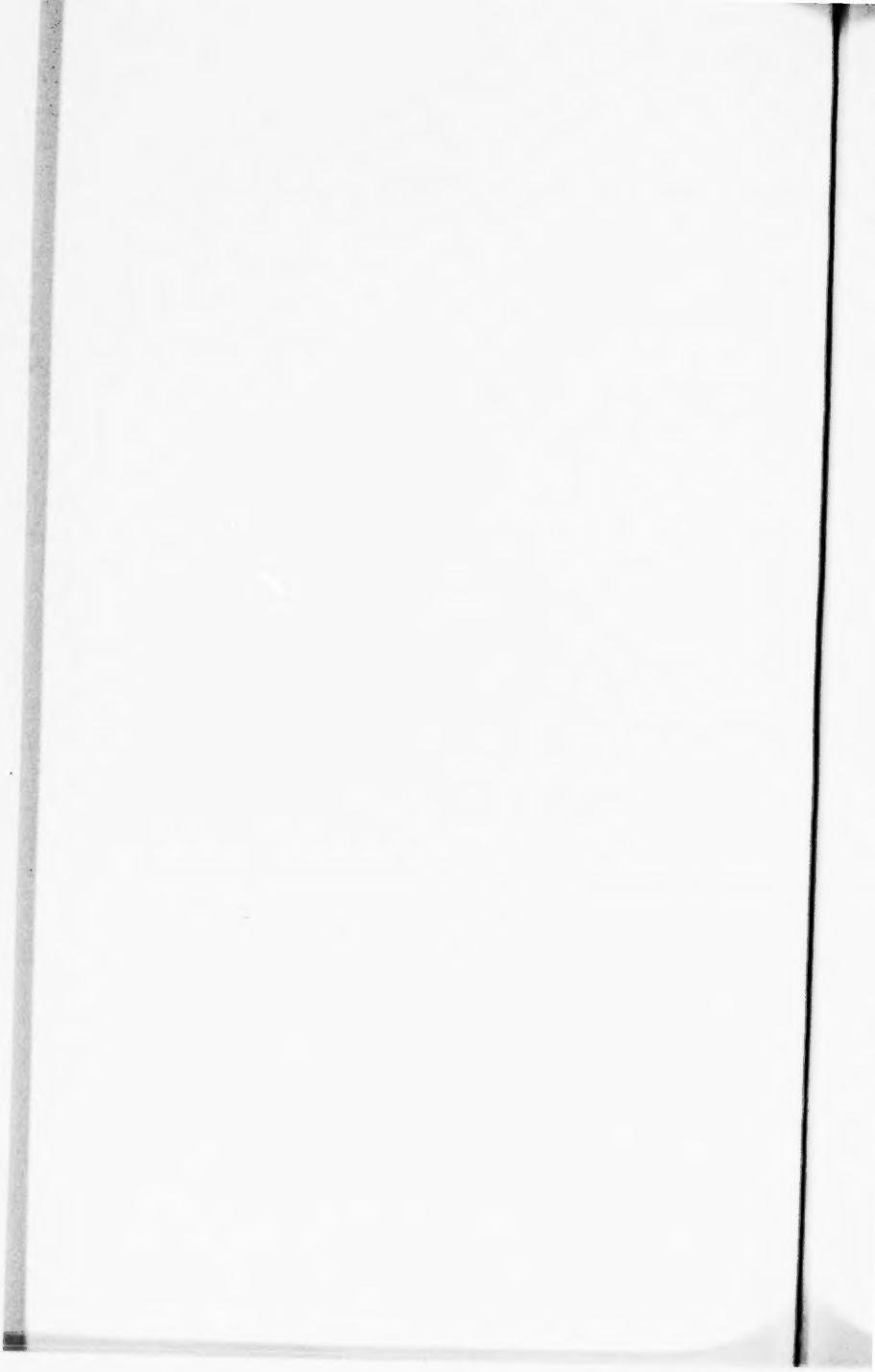
30 MINUTE TRAVEL TIME TO CAPITAL [sic] SQUARE

[Henrico Exhibit No. 36]



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SUBDIVISIONS

HENRICO COUNTY, VIRGINIA

THAT DO NOT CONTAIN RACIAL RESTRICTIVE COVENANTS

[Henrico Exhibit No. 37-A]

Source: Lawyers Title Insurance Company
Richmond, Virginia Branch Office;
Subdivision Records, Planning
Office, Henrico County

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RECORDED SUBDIVISIONS IN HENRICO COUNTY
THAT DO NOT CONTAIN RACIAL RESTRICTIVE COVENANTS

PRIOR TO 1950

No.	Subdivision	Location
1.	Dickensdale Sec. A	94-A2
2.	Ames	8-B2
3.	Sandston Highland	15-B1
4.	West Ravenswood	3-B2
5.	Glenwood Gardens	1-B2
6.	Shultz Sec. B	97-A2
7.	Marion Hill	17-B2
8.	W. Broad St. Gardens	93-A2
9.	Keswick Gardens	95A-A2
10.	Gilmoor Place	11-B2
11.	Nineakers	97-A1
12.	Hunton Heights	100-A1
13.	Fortune Heights	86-B2
14.	Montezuma Garden	1-B2
15.	Martins Manor	8-A1
16.	Laurel Dell	98-A1
17.	Quarles Heights	97-A2
18.	Media Park	19-B2
19.	Silver Spring Farms	14-A2
20.	The Village	94-B1
21.	Battle Park	15-B1
22.	Broad Acres	86-A1
23.	Broad St. Village	96-B1
24.	Bryan Park Village	96-A2
25.	Capitol View	18-B2
26.	Cedar Lawn	18-B2
27.	Courtney Terrace	93-B1
28.	East Jenningsville	92-A2
29.	Eight Acres	84-B2
30.	Elmay Crest Addition	97-A2
31.	Fair Oaks Villa Sites	15-A1
32.	Beechwood Park	12-A1
33.	Bonnie Brae	93-A1
34.	Bungalow City	12-A1
35.	Eaves Heights	7-B2
36.	Garden City	104-A1
37.	Glen Echo Park	8-B1
38.	Glen Ridge	84-B1
39.	Greendale Park	14-A1
40.	Grove Park	97-B1
41.	Hawkes Plan	12-B1
42.	Jackson Terrace	11-A2
43.	John Jasper Gardens	8-A2
44.	Kemp's Place	9-B1
45.	Laburnum Grove	3-B1
46.	Lakeside Gardens	97-B2
47.	Lakeview	100-A1
48.	Longdale	99-B2
49.	Martin Annex	2-A2
50.	Mechanicsville Gardens	1-A2

No.	Subdivision	Location
51.	Morrison Farms	12-B1
52.	Highland Park Annex (Expired Oct. 1939)	2-B1
53.	Mimosa Park Sec. A	86-B2
54.	Kemp Heights	9-B1
55.	Glen Ridge	84-B1
56.	National Heights	10-A1
57.	National Heights Addition	10-A1
58.	New Providence	3-B1
59.	Oak View	92-A2
60.	Sunset Heights	27-B1
61.	Woodville	1-A2
62.	Woodman Place	97-A2
63.	Yellow Tavern Park	104-A1
64.	Ziontown	83-A1
65.	Tatum Property	97-A1
66.	Westham	83-B2
67.	The Oaks	106-A2
68.	Varina Gardens	26-A2
69.	Varina Place	32-A1
70.	Walnut Hill	2-B1
71.	West Broad St. Village	93-B2
72.	West Hampton Settlement	84-B1
73.	West Jenningsville	92-A2
74.	West-Mont	94-B2
75.	Winona Park	98-A2
76.	Overhill Park	10-A1
77.	Park View Annex	96-B2
78.	Providence Park Annex	107-A2
79.	Quioccasin Gardens	84-A1
80.	Ratcliffe	2-A2
81.	Ravenswood	2-B1
82.	Richmond Heights	19-A2
83.	Robin Park	12-A1
84.	Roosevelt Park	1-A1
85.	Sebree's Addition	1-B1
86.	Straith	12-A1
87.	Stukeley Hall Farms	106-A2
88.	Sunset Park	79-B2
89.	Pine Dell	92-B1
90.	Whiteside Park	15-A2
91.	Shenandoah Place (In conflict with Plaintiff's Exhibit)	95A-A2

RECORDED SUBDIVISIONS IN HENRICO COUNTY
THAT DO NOT CONTAIN RACIAL RESTRICTIVE COVENANTS

AFTER 1950

No.	Subdivision	Location
1.	Andover Hills	86-B1
2.	Austin Park	2-A2
3.	Azalea Court	106-A2

No.	Subdivision	Location
4.	Battery Hills	26-B2
5.	Battlefield Acres	103-A1
6.	Belle Air	94-B1
7.	Bellefonte	80-B2
8.	Berkeley Park	93-A1
9.	Bethlehem Place	94-A2
10.	Bradley Acres	59-A1
11.	Brandon	80-B1
12.	Brandon West	80-B2
13.	Brookley Acres	90-A2
14.	Bryan Park Gardens	96-B1
15.	Bryan Park Terrace	96-B2
16.	Cabe Heights	18-B2
17.	Canterbury	80-B1
18.	Canterbury East	80-A1
19.	Capistrano Gardens	105-B1
20.	Chevalier Heights	9-B1
21.	Chilgath	97-A2
22.	Church View	97-A2
23.	Clarendon	7-A1
24.	Commerce Acres	93-B1
25.	Country Club Farms	81-A1
26.	Courtney	91-B1
27.	Currituck Farms	59-A1
28.	Davis Manor	97-A1
29.	Deep Run Manor	78-B2
30.	Deer Lodge	80-B2
31.	Dellwood	85-A1
32.	Eldridge Grove	97-A2
33.	Fairfield Gardens	2-A2
34.	Ferdson Acres	85-A1
35.	Fussell Heights	28-A1
36.	Berkshire Park	94-A1
37.	Brinkhaven	85-B1
38.	Buckingham Park	94-A1
39.	Cavalier Park	85-A2
40.	Central Gardens	1-A2
41.	Chamberlayne Hills	104-B2
42.	Chipplegate	104-B1
43.	Cloverland	3-A2
44.	College Hills	94-B1
45.	Confederate Heights	3-B2
46.	Cool Lane Court	1-A2
47.	Delmont Park	3-B1
48.	Derbyshire Place	80-B2
49.	Dickensdale	94-A?
50.	Dorset Woods	81-A1
51.	Farmington	79-A2
52.	Forest Ridge	84-B1
53.	Hermitage Court Addition	97-B2
54.	Hermitage Farms	92-A2
55.	Hickory Hills	16-B1
56.	Hollinswood	84-A2
57.	Holly Glen	102-B1
58.	Hungary Acres	98-A2
59.	Impala Place	97-A1
60.	Johnson Heights	79-B2

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No.	Subdivision	[illegible]
61.	Kings Bridge	66-A2
62.	Kingsland Manor	94-A1
63.	Lakewood Estates	[illegible]
64.	Laurel West	99-A1
65.	Lewis Gardens	29-A2
66.	Linnhaven Court	10-A1
67.	Lucerne	97-[illegible]
68.	Lydell Heights	98-B1
69.	Lynn Grove	2-A2
70.	Meadowview	12-A2
71.	Meadowwood	3-A1
72.	Michaels Court	85-[illegible]
73.	Michael Park	85-[illegible]
74.	Michael Road Terrace	85-B1
75.	Michaelshire	85-B1
76.	Middleton	98-A2
77.	Miriam Park	78-A1
78.	Monument Hills Annex	94-B1
79.	Glen Manor	7-A1
80.	Grayson Park	3-A1
81.	Greendale Manor	93-B2
82.	Hechler Village	8-B2
83.	Hermitage West	97-A1
84.	Hill & Dale	84-B1
85.	Huntington	86-A2
86.	Kildare Annex	96-A1
87.	Lakeview Manor	96-A1
88.	Laurel Park	98-A1
89.	Lawndale Farms	9-B2
90.	Mark Lawn	85-A2
91.	Mayfair Place	7-B1
92.	Michael Hills	85-B2
93.	Michael Hills Addition	85-B2
94.	Mimosa Park Sec. B	86-B2
95.	Montezuma Gardens	1-A2
96.	Mount Vernon Heights	86-B1
97.	Genacre	2-A2
98.	Tazewell Place	2-A2
99.	Terry Heights	91-B1
100.	Three Chopt Estates	85-A1
101.	Tuckahoe Hills	84-A2
102.	Tuckahoe Park	85-A2
103.	Tuckahoe Place	67-B2
104.	Tuscon Heights	92-B1
105.	Wedgewood Park	85-A1
106.	Westbourne	94-A1
107.	Westbriar	85-A1
108.	Westbury Estates	84-A2
109.	West Colony	84-A1
110.	Westdale Estates	85-B1
111.	West Forest Heights	84-A2
112.	Westgate	85-B2
113.	Westhampton Hills	94-B1
114.	Westlyn Court	93-A1
115.	Westmoor	80-A2
116.	West University Heights	84-B1
117.	Whispering Pines	93-A1

ND CLOSE IN CENTER

No.	Subdivision	Location
118.	Wildwood	104-B2
119.	Wilhaven	3-B2
120.	Windcliff	98-A1
121.	Windsordale	85-A1
122.	Wistar Farms	93-A2
123.	Woodman Terrace	98-B1
124.	York Manor	11-A2
125.	Norris Heights	97-A2
126.	North Run Terrace	98-A1
127.	Oakland Acres	28-A1
128.	Oakleigh Circle	104-A1
129.	Oakmont Hills	97-A1
130.	O'Grady Manor	43-A1
131.	Old Cannon Estates	59-B1
132.	North Run Hills	98-A2
133.	North Willow Lawn	96-A1
134.	Oak Forest	84-B1
135.	Oxford Court	2-B1
136.	Pine Heights	44-B1
137.	Randolph Ridge	99-B2
138.	Ridgehaven	85-B1
139.	Ridgeview	84-B1
140.	Ridgeway Farms	84-A1
141.	Richondo Hills	85-B2
142.	Rivermont	84-B1
143.	Rivermont Addition	84-B1
144.	River Road Hills	83-A2
145.	Rosemont	96-A1
146.	Roxbury	85-A1
147.	Sanburne Park	11-B2
148.	Scottie Farms	11-A2
149.	Sharon Hills	84-B2
150.	Seffert Place	10-A1
151.	Sheridan Hills	80-B2
152.	Skipwith Farms	85-B2
153.	Skipwith Heights	92-A1
154.	Sleepy Hollow Estates	81-A2
155.	Somerset	85-B1
156.	Sunnyside Hills	3-B2
157.	Sweetbriar Park	85-A2
158.	Pinedale	92-B2
159.	Wistar Gardens	93-A2
160.	Woodcliff	103-A1
161.	Westham	83-B2
162.	Wykehurst	66-A1
163.	Winston Heights	97-B2
164.	University Heights Addition	84-B1
165.	Valentine Hills	98-B2
166.	Wallingford	85-B2
167.	Westend Manor	86-A2
168.	West River Hills	80-B2
169.	West Sandston	11-B2
170.	Westwood Manor	94-B2
171.	Westwood Proper	94-B2
172.	Williamsburg Park	93-A1
173.	Wilton Wood	20-A2

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No.	Subdivision	Location
174.	Ringwood Park	11-B1
175.	Green Briar Hills	84-A1
176.	Overhill Park Addition	10-A1
177.	Parker Ridge	97-B2
178.	Pembrooke	85-A1
179.	Pindale Farms	85-A1
180.	Ravenswood Farm	3-B2
181.	Robindale Farms	59-A1
182.	Rock Hills	98-B1
183.	Rocky Branch Farm	98-A1
184.	Roslyn Hills	83-A1
185.	Scenic View	40-B1
186.	Sedgefield Manor	98-A1
187.	Sleepy Hollow	81-A2
188.	Sterling Court	84-A2
189.	Stuart Gardens	103-A1
190.	Suburban Apartments	96-B1
191.	Sunset Hills Addition	94-A1

ND CLOSE IN CENTER

RELEASE OF U.S. CENSUS BUREAU DATED FEBRUARY 10, 1971

[Chesterfield Exhibit No. 6]

Negro Population Movement Into Suburbs During 1960-70 Overshadowed By White Exodus From Central Cities, 1970 Census Shows

Negroes moved into the suburbs of metropolitan areas of the United States in modest numbers during 1960-70, a migration that was overshadowed by the greater exodus of whites from central cities, according to 1970 census figures released today for metropolitan areas of 500,000 and over by the Bureau of the Census, U.S. Department of Commerce.

At the same time, increases in the black populations of the central cities proved to be both large and widespread, thus changing the racial mixture substantially.

Increases in Negro suburban populations were proportionately large in some cases but rather small in total numbers. For example, in the Cleveland Standard Metropolitan Statistical Area (SMSA), Negroes increased in the suburbs by more than 450 percent, but the numerical change was only from 8,000 in 1960 to 45,000 in 1970. The white population of suburban Cleveland increased by about 239,000 in this period.

The largest numerical increase in the Negro suburban population occurred in the Los Angeles SMSA where the total was up by about 124,000 (106 percent) in 1970. In the New York SMSA, Negroes in the suburbs increased by about 77,000 (55 percent) and in the Washington, D. C., SMSA by about 84,000 (102 percent).

The rise in the black proportion of the populations of central cities is dramatized by the fact that four central cities—Atlanta, Newark, and Gary, Indiana, in addition to

Washington, D. C.—now have populations that are more than half Negro. The black proportion in Washington, the only city more than half black a decade ago, was up to 71.1 percent in the 1970 count. Black percentages in the others in 1970 are: Atlanta, 51.3; Newark, 54.2; and Gary, 52.8.

In addition, seven other central cities now have Negro population proportions of 40 percent or more. They include: Detroit (43.7); St. Louis (40.9); Baltimore (46.4); New Orleans (45.0); Wilmington, Delaware (43.6); Birmingham (42.); and Richmond (42.0). The 1970 percentages, excepting those in Richmond and Birmingham, were all up sharply.

Declines in the white populations of some central cities were substantial. In Chicago, for example, the white population declined by more than a half million (18.6 percent) and in Detroit, it declined by about 345,000 (29.2 percent). The declines in St. Louis and Newark were proportionately greater although the totals were smaller. The white population in St. Louis dropped by about 165,000 (31.6 percent); in Newark by about 98,000 (36.7 percent).

Generally, the proportionate increase of Negroes in suburban rings was not large during the decade and in some cases actually declined because of the exodus of whites into suburban areas. In the Washington SMSA, for example, the 1970 proportion of Negroes was 7.9 percent of the suburban total in 1970, up from 6.3 percent in 1960. Other suburban increases were as follows: the Los Angeles suburbs increased to 6.3 from 3.6 percent; the New York to 5.9 from 4.8 percent; and Chicago to 3.5 from 2.9 percent.

Decreases were recorded in the Baltimore and Detroit suburbs. In Baltimore the Negro proportion of suburban population was 6.0 percent in 1970 and 7.0 percent in 1960; in Detroit, the figures were 3.6 percent in 1960 and 3.7 percent in 1970.

A set of tables presenting 1970 white and Negro population totals for the 67 largest SMSA's in the Nation, ranked by size, is appended.

* * *

AFFIDAVITS OF J. GARLAND JEFFERSON, JR. AND ERNEST P. GATES

[Chesterfield Exhibit No. 19]

tate of Virginia,
ounty of Amelia:

I, J. Garland Jefferson, Jr., do hereby make oath that I as the Judge of the Circuit Court of Chesterfield County om the 2nd day of April, 1938, until the 20th day of ebruary, 1956, and that during the said period of time no gal proceeding was instituted in said court for the enforcement of any racially restrictive covenant upon real property.

Given under my hand this the /s/ 14 day of July, 1971.

/s/ J. Garland Jefferson, Jr.
J. Garland Jefferson, Jr.

[Jurat Omitted in Printing]

tate of Virginia
ounty of Chesterfield:

I, Ernest P. Gates, do hereby make oath that I was the ommonwealth's Attorney of Chesterfield County from the t day of August, 1954, until the first day of July, 1966, and at I have been Judge of the Circuit Court of Chesterfield ounty since July 1, 1966; that during the period of time I as Commonwealth's Attorney of Chesterfield County, I racticed Law at Chesterfield Court House, and from Aust 1, 1954, until this day no legal proceeding was instited in said Court for the enforcement of any racially strictive covenant upon real property.

Given under my hand this /s/ 1st day of September, 1971.

/s/ Ernest P. Gates
Ernest P. Gates

[Jurat Omitted in Printing]

PERCENT OF SPECIFIED CITY OR COUNTY RESIDENT BIRTHS OCCURRING IN RICHMOND
1965, 1968-1970

[Chesterfield Exhibit No. 22]

Place of Residence	Year 1965	1968	1969	1970
Amelia	63.4	66.3	67.8	70.8
Charles City	94.3	91.7	89.7	88.6
Chesterfield	85.4	65.1	60.9	54.6
Dinwiddie	38.8	38.7	27.4	30.5
Goochland	92.9	84.7	79.3	77.1
Hanover	96.6	88.3	82.7	77.0
Henrico	98.4	70.9	70.1	65.7
New Kent	86.4	83.7	75.3	67.6
Powhatan	96.0	80.4	86.1	76.3
Prince George	12.9	13.0	7.1	8.9
Colonial Heights	6.8	7.5	8.6	5.8
Hopewell	17.9	17.1	13.0	22.2
Petersburg	34.2	32.6	34.8	33.7
Richmond	98.4	92.5	90.3	84.7

Prepared by: Bureau of Vital Records and Health Statistics
Virginia State Department of Health

* * *

SUBDIVISIONS IN CHESTERFIELD COUNTY WITH RACIAL RESTRICTIONS

[Chesterfield Board of Supervisors and School Board Exhibit No. 37]

Name of Subdivision	Date Recorded	Plat	Date	No. of Lots
Forest Hts. Farms	1-5-15	P. B. [illegible], Pg. 174	3-21-[illegible]	46
Gem Acres	1929	P. B. [illegible], Pg. 92	2-23-6[illegible]	15
Southampton Acres, Section 1	6-11-28	P. B. 9, Pg. 68 & 69	6-21-[illegible]	51
Southampton Acres Section 2	6-11-28	P. B. 9, Pg. 147 & 148		52
Southampton Acres Section 3	6-11-28	P. B. 12, Pg. 15 & 16	2-24-[illegible]	31
Searcy, Sect. 3	12-20-45	P. B. [illegible], Pg. 153	11-20-[illegible]	22
Patterson Park	6-27-31	P. B. 3, P. 217	7-6-31	186
Patterson Park Section 2	6-29-55	P. B. 17, P. 29	4-28-[illegible]	7
Rock Hill Farms # 17	7-16-39	P. B. 7, Pg. 94 & 95		18
Rivermont Ridge	D. B. 286, Pg. 115 Prior to 1950	P. B. 5, P. 216		11
Rivermont Annex	1932	P. B. 5, P. 107		11
Mohawk	5-1-28	P. B. 8, Pg. 177		21
North Rivermont	Prior to 1950	P. B. 4, Pg. 226		33
Kingsland Heights	7-18-15	P. B. 2, Pg. 398	7-8-15	18
Madison Heights	4-12-28	P. B. 5, Pg. 74		235
Madison Heights	4-25-29	P. B. 5, Pg. 74		18
Overstreet Property	12-23-46	D. B. 305, P. 115	12-23-46	7
Oakland	D. B. 216, Pg. 3[illegible] Prior to 1950	P. B. 3, P. 45		56
Total Subdivisions - 17				3,373

CLUBS

Hi-Y
Key
Math
Pep
Art
Drill & S.
French
Spanish
Latin
FSLA
FHA
FTA
Science
National Hono
Drama
History
Library
Audio Visual
DECA
VICA
COE
Band and Chor
German
Girls V.
Daniel Life
SCA
Red Cross
Boys V.
Monogram
Year Book
Chess
Newspaper

SPORTS

Football
Boys Baseball
Boys Basketba
Track
Girls Basketb
Girls Softbal
Tennis
Golf
Wrestling

High School
College

PARTICIPATION BY RACE IN VARIOUS XTRACURRICULAR ACTIVITIES—CHESTERFIELD COUNTY HIGH SCHOOLS

nesterfield Board of Supervisors and School Board
it No. 32 to District Court Proceedings of September
1]

CHESTERFIELD COUNTY PUBLIC SCHOOLS
CHESTERFIELD, VIRGINIA 23832

1970-71

MEADOWBROOK		THOMAS DALE		MANCHESTER		MIDLOTHIAN		MATOACA	
W	B	W	B	W	B	W	B	W	B
1102	33	1506	191	1176	69	1302	94	504	389
30	---	88	5	23	---	---	---	---	---
60	---	50	---		---	---	---	14	5
15	---	---	---	---	---	---	---	---	---
26	---	73	15	---	---	80	2	12	28
15	---	53	5	---	---	20	---	---	---
15	---		---	---	---	---	---	---	---
15	---	22	1	---	---	15	2	---	---
18	---	51	2	42	3	---	---	---	---
12	---	15	---	---	---	19	1	---	---
25	---	21	8	---	---	---	---	---	---
31	2	34	2	58	---	24	1	---	---
10	3	15	3	28	2	---	---	---	---
16	---	---	---	---	---	15	---	---	---
36	---	27	2	35	1	50	2	10	6
25	---	23	6	---	---	40	5	---	---
23	---	---	---	---	---	---	---	---	---
8	---	12	4	---	---	---	---	---	---
8	---	10	---	21	---	---	---	---	---
25	---	37	12	---	---	---	---	---	---
25	---	33	2	---	---	9	1	---	---
25	---	15	5	---	---	---	---	---	---
128	6	94	18	170	7	59	12	41	71
---	---	28	---	---	---	8	---	---	---
30	---	19	6	25	3	31	1	---	---
---	---	36	8	---	---	---	---	---	---
58	2	46	3	62	4	4	1	---	---
---	---	39	1	---	---	37	4	---	---
54	2	31	5	41	1	28	2	---	---
---	---	---	---	33	1	---	---	---	---
15	---	16	---	24	---	28	1	---	---
---	---	---	---	---	---	7	---	---	---
25	1	23	3	11	---	7	---	10	5
51	2	79	15	44	1	42	3	17	17
30	---	17	1	37	2	16	---	13	5
24	---	13	11	28	2	12	2	2	9
29	2	35	2	44	2	15	---	---	---
15	--	9	6	13	---	15	---	5	9
15	---	11	4	18	---	16	1	6	6
8	---	12	---	32	---	11	---	4	3
8	---	12	---	13	---	8	---	---	---
30	2	15	3	24	1	---	---	---	---
25	2	55	4	27	---	32	4	8	8
165	5	156	18	135	1	116	5	23	29

1970-

GRANGE HALL

	W	B
CLUBS		
	399	202
Pep	22	7
FHA	30	12
SCA	14	3
Year Book	14	1
Newspaper	13	2
Safety	24	5
SPORTS		
Boys Baseball	14	---
Boys Basketball	23	7
Fall Intramurals	14	---
Spring Intramurals	9	4
High School Honors	33	10
College	9	---
Vocational Training	1	1

[illegible]

[Chesterfield Exhibit No. 38]

Name of Subdivision	Plat Reference	No. of Lots
Alice Heights, Sec. A	P.B. 10, p. 85 7/14/58	39
Alice Heights, Sec. B	P.B. 10, p. 89 8/3/65	31
Amber Heights, Sec. A	P.B. 13, p. 86 3/13/64	27
Amber Heights, Sec. B	P.B. 14, p. 4 7/13/64	5
Apple Acres	P.B. 11, p. 94 3/18/60	8
Archway, Sec. A	P.B. 16, p. 4 9/14/67	45
Arrochead, Sec. 2	P.B. 14, p. 34 & 35 11/12/64	46
Arsenal Hills	P.B. 9, p. 76 & 77 7/11/55	29
Avon Estates	P.B. 9, p. 7	18
Avon Park	P.B. 8, p. 94 & 95 6/4/47	44
Beechwood Farm, Sec. B	P.B. 11, p. 29 5/6/59	4
Ballard Oaks	P.B. 14, p. 6 7/20/64	16
Belleau Circle	P.B. 11, p. 47	8
Beechwood Farm	P.B. 9, p. 137 8/17/56	8
Belmont Acres	P.B. 9, p. 100 & 101 2/2/56	106
Belmont Farms	P.B. 4, p. 55	55
Belmont Hills, Sec. A	P.B. 15, p. 5, 6 & 7 8/20/65	111
Bedford, Sec. A	P.B. 15, p. 29 2/10/[illegible]	28
Bedford, Sec. B	P.B. 16, p. 6 9/1/67	13
Bellwood Heights Development	P.B. 8, p. 60 & 61	60
Bellwood Farm	P.B. 3, p. 186	52
Belmont	P.B. [illegible], p. [illegible]	[illegible]
Beechwood, Sec. A.	P.B. 12, p. 58 & 59	50
Beechwood, Sec. B	P.B. 13, p. [illegible] 7/[illegible]	5
Beechwood, Sec. C	P.B. 14, p. [illegible]	26
[illegible]	P.B. [illegible], p. [illegible]	[illegible]
Bermuda Country Ex[illegible]	P.B. 16, p. [illegible] 6/[illegible]	[illegible]

Boulevard Heights	P.B. 8, p. 110	49
Brighton Green, Sec. 11	P.B. 17, p. 68 5/[illegible]	51
Brighton Green, Sec. 9	P.B. 16, p. [illegible] 10/10/[illegible]	[illegible]
Brighton Green, Sec. 8	P.B. 16, p. 16 8/[illegible]	[illegible]
Brighton Green, Sec. 7	P.B. 15, p. 49 & 50	42
Brighton Green, Sec. 6	P.B. 16, p. 77 & 78 6/24/65	31
Brighton Green, Sec. 5	P.B. 13, p. 69 11/27/63	67
Brighton Green, Sec. 4	P.B. 13, p. 69 7/10/63	18
Brighton Green, Sec. 3	P.B. 12, p. 85	16
Brighton Green, Sec. 2	P.B. 12, p. 3	17
Brighton Green, Sec. 1	P.B. 10, p. 86	19
Brighton Green, Sec. 10	P. B. 17, p. 30	8
Bon Air Terrace	P.B. 9, p. 75	50
Bon Mond	P.B. 10, p. 31 5/1/57	10
Brierwood	P.B. 16, p. 93 & 94 12/11/62	11
Bon Air Hills	P.B. 9, p. 134-136 5/16/56	128
Bon Air	P.B. 3, p. 65	
Boisseau's Plan	P.B. 1, p. 155	93
Bon Air Knolls	P.B. 13, p. 12 11/16/62	9
Bonafountaine, Sec. 1	P.B. 12, p. 51 5/29/61	7
Bon Air	P.B. 1, p. 115 7/27/1[illegible]	176
Bon Air	P.B. 3, p. 50 & 51	110
Bon Air Height	P.B. 8, p. 161 5/2/49	[illegible]
Bon Air Court	P.B. 9, p. 69 5/31/55	[illegible]
Bon Air Knolls	P.B. 10, p. 91 5/2/56	[illegible]
[illegible]	P.B. 17, p. [illegible] 7/20/[illegible]	[illegible]
[illegible]	P.B. 16, p. [illegible] 6/20/[illegible]	[illegible]
[illegible]	P.B. 16, p. [illegible] [illegible]	[illegible]
	[illegible]	[illegible]
[illegible]	P.B. 15, p. 64	[illegible]
[illegible]	P.B. [illegible]	

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[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

Falling Creek Court, Sec. C	P.B. [illegible], p. [illegible] 6/26/[illegible]	[illegible]
Falling Creek Farms, Sec. E	P.B. [illegible], p. [illegible] 1/31/[illegible]	67
Falling Creek Farms, Sec. D	P.B. 13, p. [illegible] 3/20/[illegible]	17
Falling Creek Farms, Sec. C	P.B. 17, p. [illegible] 1/12/62	21
Falling Creek Farms, Sec. B	P.B. 11, p. 72 [illegible] 8/27/59	23
Falling Creek Farms, Sec. A	P.B. 9, p. 116 [illegible] 5/24/56	23
Falling Creek Hills, Block F	P.B. 11, p. 5, [illegible]	182
Falling Creek Hills, Sec. 2	P.B. 11, p. 56 6/9/59	10
Harrowgate	P.B. 8, p. 262 6/10/54	30
Hidden Valley Estates, Sec. 1	P.B. 16, p. 79 9/11/68	32
Hidden Valley Estates, Sec. 2	P.B. 17, p. 37 10/31/69	56
Hornsby	P.B. 10, p. 40 7/19/57	7
Home Acres	P.B. 4, p. 96 11/7/27	95
Hallie	P.B. 13, p. 92 10/1/63	9
Holiday Acres, Sec. A	P.B. 9, p. 118 6/12/56	26
Hollyberry Hills, Sec. A	P.B. 13, p. 58 9/10/63	15
Hollyberry Hills, Sec. B	P.B. 15, p. 47 8/5/66	8
Hollyberry Hills, Sec. C	P.B. 16, p. 47 3/4/68	10
Hillandale, Sec. C	P.B. 15, p. [illegible] 3/6/67	40
Hillandale, S. Rt. 711	P.B. 11, p. 93 9/30/55	33
Highland Hills, Sec. A	P.B. 9, p. 40 4/20/55	79
Hylton Park, Sec. A	P.B. 11, p. 17 9/2/[illegible]	[illegible]
Hylton Park, Sec. B	P.B. 14, p. 16 8/18/[illegible]	26
Hugoeret Hundred, Sec. A	P.B. 15, p. 70 10/31/66	16
Hugoeret Hundred, Sec. C	P.B. 16, p. [illegible] [illegible]	[illegible]
Hugoeret Hundred, Sec. B	P.B. 15, p. [illegible] 1/[illegible]/67	[illegible]

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Indian Territory, Sec. A	P.B. 15, p. 32 11/[illegible]/[illegible]	56
Irvin Park	P.B. 4, p. 201 4/[illegible]	24
Redfield's Sub.	P.B. 5, p. 71	30
Swift Tract [illegible]	P.B. 15, p. 57 3/[illegible]	32
Trempline Farms, Sec. B	P.B. 15, p. 31 4/[illegible]	26
Trempline Farms, Sec. A	P.B. 14, p. 51 2/[illegible]	52
Sunnybrook Acres, Sec. A	P.B. 11, p. 55 6/[illegible]	75
St. John's Woods	P.B. 14, p. 27 12/12/62	17
Treehaven Heights, Sec. 2	P.B. 14, p. 33 9/13/[illegible]	29
Treehaven Heights, Sec. 1	P.B. 13, p. 15 11/[illegible]	19
Treehaven Heights, Sec. 3	P.B. 17, p. 41 10/[illegible]	12
Surreywood, Sec. A	P.B. 16, p. 37 & 38 4/[illegible]	46
Surreywood, Sec. B	P.B. 16, p. 38 10/[illegible]	45
Werths Addition	P.B. 2, p. 234 & 235	103
Walnut Place	P.B. 8, p. 241 1/[illegible]	22
West Chesterfield Heights	P.B. 8, p. 49	5
Villa Ridge Farms	P.B. 4, p. 194 & 195 6/13/[illegible]	9
Walthall Hills	D.B. 569, p. 495 11/[illegible]	7
Victoria Hills, Sec. D	P.B. 13, p. 76 & 77	38
Victoria Hills, Sec. C	P.B. 13, p. 55 7/[illegible]	11
Victoria Hills, Sec. B	P.B. 13, p. 13 & 14 7/[illegible]	36
Victoria Hills, Sec. A	P.B. 13, p. 43 4/[illegible]	12
Union Center	P.B. 11, p. 43 [illegible]	22
Windsor Forest, Sec. B	P.B. 13, p. 8 & 9 [illegible]	37
Kinder Court, Sec. 1	P.B. [illegible], p. 121	4
Quail Run, Sec. C	P.B. 13, p. 4 & 5 [illegible]	117
Kinder Court	[illegible] 5/[illegible]	59

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Revere Estates, Sec. 1	P.B. 11, p. 82 10/14/59	25
Lake Crystal Farms, Sec. B	P.B. 12, p. 74 3/6/62	25
Lake Crystal Farms, Sec. A	P.B. 12, p. 44 3/7/61	37
Lyndale, Sec. B	D.B. 303, p. 470 11/6/65	18
Longwood Acres, Sec. D	#1 P.B. 9, p. 100 & 101 1/24/56	
	#2 P.B. 15, p. 58 & 59 9/12/66	37
Longwood Acres, Sec. C	P.B. 11, p. 19 & 20	64
Longwood Acres, Sec. B	P.B. 10, p. 111 7/27/59	58
Longwood Acres, Sec. A	P.B. 10, p. 49 9/15/57	6
Logancovert	P.B. 11, p. 2 9/5/67	4
Lora Lynn Heights, Sec. 2	P.B. 16, p. 55 5/15/68	3
Lakewood Farms, Sec. A	P. B. 14, p. 44 1/4/65	15
Lake Hills, Sec. B	P.B. 13, p. 97 1/14/64	4
Land O'Pines, Sec. A	P.B. 10, p. 25 & 26 2/6/57	231
Lewis Heights	P.B. 14, p. 68 8/2/64	7
Lindell Estates	P.B. 11, p. 86 11/24/59	9
Locust Grove	P.B. 5, p. 214 7/15/48	39
Locust Grove Addition	P.B. 9, p. 33 10/1/53	25
Lake Forest	P.B. 15, p. 18 1/11/66	12
Lake Crystal Farms, Sec. C	P.B. 13, p. 6	10
Lake Crystal Farms, Sec. E	P.B. 17, p. 28 8/15/69	27
Lake Crystal Farms, Sec. D	P.B. 13, p. 78 & 79 2/7/64	25
Graves Hill, Sec. A	P.B. 12, p. 80 4/9/62	4
Greenbriar, Sec. 2	P.B. 14, p. 70 2/22/65	53
Gravelbrook Farms	P.B. 11, p. 39 6/[illegible]/59	43
Garland Heights, Sec. C	P.B. 11, p. 61 8/[illegible]	[illegible]
Glen Echo Place	P.B. 12, p. 17 5/31/[illegible]	21

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Crowd Pit Farms	P.B. 7, p. 79 9/9/61	14
Coyne Subdivision, Sec. 1	P.B. 8, p. 153 5/1/59	23
Glen Connor, Sec. B	P.B. 17, p. 91 11/4/70	7
Glen Connor, Sec. A	P.B. 14, p. 97 7/2/62	37
Gay Farms, Sec. 3	P.B. 14, p. 83 6/7/65	47
Gay Farms, Sec. 2	P.B. 13, p. 72 11/13/61	10
Garden City Heights	P.B. 3, p. 54 & 57 1/1/13	104
Greenfield, Sec. G	P.B. 17, p. 35 10/3/69	31
Greenfield, Sec. F	P.B. 17, p. 2 7/5/69	26
Greenfield, Sec. E	P.B. 16, p. 43 5/6/68	22
Greenfield, Sec. D	P.B. 15, p. 93 6/26/67	31
Greenfield, Sec. C	P.B. 15, p. 23 2/24/66	71
Greenfield, Sec. B	P.B. 14, p. 56 3/1/65	33
Greenfield, Sec. A	P.B. 13, p. 63 & 64 11/7/63	66
Grassland	P.B. 3, p. 130	22
Gwin Estates, Sec. A	P.B. 17, p. 70 6/16/70	22
Gatewood, Sec. 1	P.B. 15, p. 50 & 51 1/27/65	47
Garland Heights, Sec. B	P.B. 10, p. 111 1/30/59	8
Garland Heights, Sec. A	P.B. 10, p. 6 10/16/57	14
Garland Heights, Sec. C	P.B. 11, p. 61 7/15/59	39
Garland Heights, Sec. D	P.B. 13, p. 25 & 26 3/19/63	63
Garland Heights, Sec. E	P.B. 14, p. 21 & 22 [illegible]	104
[illegible]	[illegible]	46
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

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Deerfield Estates, Sec. C	P.B. 15, p. 26 & 27 3/30/66	36
Deerfield Estates, Sec. B	P.B. 13, p. 18 1/30/63	32
Deerfield Estates, Sec. A	P.B. 12, p. 24 & 25	87
Grove Place	P.B. 8, p. 124 3/5/48	31
Grindall Creek Park, Sec. B	P.B. 9, p. 2 8/14/50	78
Grindall Creek Park	P.B. 8, p. 125 & 126 4/12/48	
Green Pines	P.B. 9, p. 103 1/27/56	7
Stonehenge, Sec. B	P.B. 16, p. 75, 76 & 77 7/27/68	101
Stonehenge, Sec. A	P.B. 15, p. 62-64 9/20/66	70
Sheffield Court	P.B. 13, p. 20 2/4/63	26
Shenandoah, Sec. D	P.B. 16, p. 85 & 86 10/25/68	101
Shenandoah, Sec. C	P.B. 15, p. 36 & 37 6/9/66	57
Shenandoah, Sec. B	P.B. 14, p. 79 & 80 5/14/65	62
Shenandoah, Sec. A	P.B. 14, p. 24 9/17/64	56
Spring Hill, Sec. A	P.B. 15, p. 76-79 9/21/66	81
Shady Spring, Sec. 1	P.B. 14, p. 94, 95 & 96 6/1/65	71
Sharp's Subdivision	P.B. 8, p. 194 4/3/52	6
Shield's Property	P.B. 7, p. 84 & 85	40
Southan, Sec. A	P.B. 9, p. 110 3/12/56	29
Southan, Sec. B	P.B. 11, p. 50 4/22/59	73
Southan, Sec. D	P.B. 13, p. 57 8/5/63	5
Squarefield Park Farms	P.B. 3, p. 146	30
Old Gum Acres	P.B. 15, p. 56 & 57 8/4/66	11
Olde Couch Village, Sec. B	P.B. 17, p. 61 4/3/70	114
Olde Couch Village, Sec. A	P.B. 16, p. 95 12/12/68	68
Olde Couch Hills, Sec. A	P.B. 16, pages 28 & 29 2/3/[illegible]	49
Old Maple Farm, Sec. A	P.B. 15, p. 65 & 66 10/[illegible]/66	22

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[illegible]	2/14/52	35
Orchard Acres	P.B. 10, p. 112 10/12/54	14
Pleasant [illegible], Sec. A	7/6/70	5
Plymouth [illegible]	P.B. 9, p. 62 8/2/55	19
Pocoshock Hills	P.B. 8, p. 25 & 26 6/5/41	65
Preston Place	P.B. 14, p. 8 & 9 7/8/64	34
Providence Farms	P.B. 3, p. 159 10/14/48	19
Pocoshock Heights	P.B. 9, p. 78 & 79 7/19/55	90
Pocono, Sec. A	P.B. 15, p. 19 1/13/66	49
Penn Acres	P.B. 11, p. 65 & 66 8/18/[illegible]	69
Pocahontas Acres	P.B. 10, p. 35 & 36 5/20/[illegible]	33
Roosevelt Park	P.B. 8, p. 53 10/8/45	72
Rock Spring Farms, Sec. A	P.B. 9, p. 139 6/29/56	51
Rock Spring Farms, Sec. B	P.B. 10, p. 1 & 2 6/29/56	103
Rosalie	P.B. 3, p. 80 2/5/14	20
Richland Road	6/20/[illegible]	1
Rock Creek Park, Sec. B	P.B. 9, p. 132 5/2/56	17
Rock Creek Park, Sec. A	P.B. 8, p. 274 7/30/56	27
Rock Creek Park, Sec. C	P.B. 12, p. 13 7/12/60	28
Robertson Place	P.B. 8, p. 206 11/1/52	35
Salisbury, Sec. H-1	P.B. 17, p. 3 & 4 1/7/69	35
Salisbury, Sec. F	P.B. 16, p. 30 2/23/68	6
Salisbury, Sec. E	P.B. 16, p. 17 11/[illegible]	11
Salisbury, Sec. D	P.B. 15, p. 39 & 40 6/23/[illegible]	26
Salisbury, Sec. C	P.B. 14, p. 93 & 94 9/[illegible]	25
Salisbury, Sec. F-2	P.B. 17, p. [illegible] 2/[illegible]	5
Salisbury, Sec. E-2	P.B. 16, p. [illegible] [illegible]	1

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Salisbury, Sec. B	P.B. 13, p. 7, 8 & 9 9/21/62	45
Salisbury, Sec. A	P.B. 10, p. 73 2/20/58	67
Windsor Forest, Sec. A	P.B. 16, p. 14 & 15 11/29/67	41
Winterfield	P.B. 1, p. 27	65
Wildwood	P.B. 9, p. 96 9/20/55	19
Wooddale	P.B. 8, p. 198 4/7/52	30
Woodcroft	P.B. 10, p. 29 4/2/57	20
Wilkinson Terrace, Sec. A	P.B. 8, p. 284-286 11/9/54	119
Wilkinson Terrace, Sec. B	P.B. 9, p. 32	13
Mineborya, Sec. A	P.B. 14, p. 13 8/7/64	10
Newberry Towne, Sec. A	P.B. 18, p. 4 & 5	75
Nowetta Gardens	P.B. 8, p. 260	19
Northlake Hills	P.B. 9, p. 84 8/31/55	38
Northlake Hills, Sec. C	P.B. 13, p. 95 4/14/64	10
Northlake Hills, Sec. Ex D	P.B. 15, p. 20	14
McKesson Place, Sec. A	P.B. 12, p. 83 1/2/62	26
Normandale Terrace	P.B. 7, p. 115 11/4/29	536
Nunnally's Addition	P.B. 2, p. 197	15
Mount Blanco, Sec. 3	P.B. 10, p. 50	3
Mount Blanco, Sec. 4	P.B. 12, p. 67	18
Morrisdale	P.B. 8, p. 155 & 156	61
Morristown	P.B. 8, p. 106	13
Woodmont, Sec. E	P.B. 11, p. 26 5/13/59	210
Woodmont, Sec. D	P.B. 10, p. 100 & 101	105
Woodmont, Sec. F	P.B. 10, p. 68 & 69	5
Woodmont, Secs. B & C	P.B. 10, p. 67	135
Woodmont, Sec. A	P.B. 10, p. 37	70
Woodridge	P.B. 4, p. 81	20
Kimberly Acres, Sec. 1	P.B. 17, p. 72 2/25/70	38
Jessup Place	P.B. 9, p. 72 6/1/57	55
Johnie Place	P.B. 7/p. 21 3/1940	

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Jessup Farms, Sec. E	P.B. 14, p. 7 5/15/63	15
Jessup Farms, Sec. A	P.B. 12, p. 26 7/22/60	25
Kellersley, Sec. B	P.B. 13, p. 1 7/3/62	9
Kellersley, Sec. A	P.B. 12, p. 30 12/28/60	6
Kendale Acres, Sec. B	P.B. 14, p. 82 7/30/65	32
Kin-Key, Sec. A	P.B. 13, p. 93 4/1/64	14
Meadowbrook, Sec. B	P.B. 12, p. 9 5/4/60	155
Meadowbrook, Sec. A	P.B. 11, p. 68 10/5/59	93
Masondale	P.B. 1, p. 119 6/21/56	5
W. W. Mason Estate	P.B. 8, p. 97	8
Meadowbrook West, Sec. B	P.B. 15, p. 69 10/21/66	23
Meadowbrook West, Sec. A	P.B. 15, p. 38 6/29/66	8
Meadowbrook Manor	P.B. 16, p. 8 5/22/67	94
Meadowbrook Club Sites, Sec. C	P.B. 12, p. 33 8/11/60	40
Meadowbrook, Sec. D	P.B. 17, p. 10 9/15/68	48
Meadowbrook, Sec. C	P.B. 14, p. 36 12/16/64	58
Meadowbrook West, Sec. E	P.B. 16, p. 40 7/11/68	24
Meadowbrook West, Sec. D	P.B. 16, p. 1 8/10/67	17
Meadowbrook West, Sec. C	P.B. 15, p. 100 7/7/67	18
Meadowdale, Sec. A	P.B. 17, p. 19 6/15/68	74
Meadowbrook West, Sec. C	P.B. 17, p. 16 4/21/69	49
Meadowbrook West, Sec. F	P.B. 16, p. 59 4/22/68	33
Meadowdale, Sec. [illegible]	P.B. 15, p. 54 2/21/66	33
Meadowdale, Sec.	P.B. 17, p. 23 2/4/69	3
Meadowdale, Sec.	P.B. 16, p. 33 11/	3

Meadowdale, Sec. D	P.B. 16, p. 97 9/23/68	86
Meadowdale, Sec. B	P.B. 14, p. 41 8/6/64	81
Marlboro, Sec. B	P.B. 14, p. 54 2/26/65	98
Meadowridge, Sec. A	P.B. 334, p. 139 2/15/60	53
Meadowridge, Sec. B	P.B. 9, p. 144 10/15/56	7
Marlboro, Sec. C	P.B. 15, p. 33 5/24/66	22
Marlboro	P.B. 12, p. 62 10/16/61	116
Manchester Heights, Sec. C	P.B. 11, p. 11 12/12/58	67
Manchester Heights, Sec. D	P.B. 11, p. 11 12/12/58	
Mid City Farms, Sec. A	P.B. 3, p. 242	54
Mayfair Estates, Sec. A	P.B. 16, p. 62 7/20/68	45
Olive Hill Farm	P.B. 5, p. 259 7/30/45	4
Orange Hill, Sec. A	P.B. 4, p. 66	76
Orange Hill, Sec. J	P.B. 9, p. 44 5/20/55	21
Orange Hill, Sec. F	P.B. 5, p. 92	13
Old Town Creek	P.B. 9, p. 111 4/27/56	69
Oxford Place	P.B. 13, p. 96 5/12/64	4
Otterdale Park, Sec. A	P.B. 15, p. 96 2/21/67	12
Old Gun Acres, Sec. B	P.B. 17, p. 14 3/6/69	6
Scottingham, Sec. B	P.B. 16, p. 90 11/20/68	22
Scottingham, Sec. C	P.B. 18, p. 10 1/20/71	16
Scottingham, Sec. A	P.B. 16, p. 27 12/20/67	1
Scottmar, Sec. C	P.B. 14, p. 75 7/1/65	40
Scottmar, Sec. B	P.B. 17, p. 31 9/19/69	6

[State Exhibit No. 12]

DISTRIBUTION OF [illegible] PUBLIC SCHOOL SYSTEMS AND NUMBER OF PUPILS, BY SIZE OF SYSTEM, FOR THE U.S. AND VIRGINIA: FALL 1970

Distribution of operating local public school systems and number of pupils, by size of system, for the United States: Fall 1970

Size of system	Public school systems		Public school pupils	
	Number	Percent	Number 1/	Percent
Total operating systems.....	17,498	100.0	45,037,667	100.0
Systems with 300 pupils or more....	11,704	66.9	44,429,905	98.7
100,000 or more	28	.2	6,755,498	15.0
25,000 to 99,999.....	163	.9	6,694,823	15.0
10,000 to 24,999.....	557	3.2	8,051,609	17.9
5,000 to 9,999.....	1,104	6.3	7,626,270	17.0
2,500 to 4,999.....	2,018	11.5	7,036,096	15.6
1,000 to 2,499.....	3,448	19.7	5,635,730	12.5
600 to 999.....	1,976	11.3	1,541,080	3.4
300 to 599.....	2,410	13.8	1,056,883	2.3
Systems with less than 300 pupils.....	5,794	33.1	607,762	1.3

* Including Hawaii, District of Columbia, Puerto Rico, Canal Zone, Guam, and the Virgin Islands.

SOURCE: Education Directory: Public School Systems, 1970-71, Department of Health, Education, and Welfare, Office of Education, National Center for Educational Statistics.

Distribution of operating local public school systems and number of pupils, by size of system, for Virginia: Fall 1970

Size of system	Public school systems		Public school pupils	
	Number	Percent	Number	Percent
Total operating systems	129	100.0	1,061,118	100.0
Systems with 300 pupils or more. . . .	129	100.0	1,061,118	100.0
100,000 or more	1	.8	129,943	12.2
25,000 to 99,999	10	7.7	347,170	32.7
10,000 to 24,999	12	9.3	173,176	16.3
5,000 to 9,999	30	23.2	214,431	20.2
2,500 to 4,999	37	28.7	133,982	12.6
1,000 to 2,499	37	28.7	61,044	5.8
600 to 999	1	.8	793	.1
300 to 599	1	.8	579	.1
Systems with less than 300 pupils. . .	0	0	0	0

SOURCE: Education Directory: Public School Systems, 1970-71. Department of Health, Education

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PUPIL ENROLLMENT

Fall 1970

Division	Enrollment	Rank
Fairfax	133,021	1
Norfolk	55,739	2
RICHMOND	47,824	3
Virginia Beach	45,295	4
LYNCHBURG	34,080	5
Hampton	31,968	6
Newport News	31,581	7
Prince William	30,653	8
Portsmouth	25,837	9
Chesapeake	24,842	10
Arlington	24,761	11
CHESTERFIELD	24,069	12

The remaining 117 school divisions have enrollments ranging from 579 to 20,904 with 76 each having less than 5,000 pupils.

SOURCE: Fall 1970 Reports as submitted to the State Board of Education.

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EXTRACTS FROM SURVEY PARTICIPATED IN BY DR. JAMES W. WHITLOCK

[Richmond School Board's Exhibit No. 93 to District Court Proceedings of September 8, 1971]

Extracts from "A Survey Report - Raleigh-Wake County Public Schools" participated in by State and County defendants' expert, Dr. James W. Whitlock

1. FOREWORD (pp. v-vi)

The survey team consisted of a group of nationally recognized specialists, each committed to the belief that educational opportunity for any given child consists of those experiences that are available to him for his own participation. Thus, adequate opportunity for all children and youth means that it should not make too much difference where they live. In Raleigh and Wake County it does make a difference -- too much of a difference as the evidence shows.

Some improvements in the adquacy of educational opportunity are needed no matter what the pattern of corporate school government might be. This means that even after the decision is reached regarding merger, whatever that decision may be, the citizens of Raleigh and Wake County must continue to study their school problems and must determine to make some changes for the better. The differences within either system may be as great or greater than those between systems.

Such study is the responsibility of citizens throughout the metropolitan area.

2. CHAPTER 1

Two important points concerning future industrialization seem apparent. One is that it probably will decentralize increasingly from its close-in Raleigh core onto new and expanded sites, some of which will lie outside of the present city. This expectation is reflected in various land development plans proposed for the area. Another is that the new industrial prospects probably will require progressively higher skilled workers. Success in garnering new industry will rest substantially on the presence of a suitable labor supply. This points directly to the relationships between public education and economic progress, since the schools are the basic preparation agent for the community. (Page 7)

In preparing for all of the contingencies of the new industrialization, however, school planning should be an integral part of community planning. Planning for education should be based on conscious decisions about what schools are to do for their clientele and community. Achieving such planning unity in the Raleigh-Wake County community would doubtlessly be greatly facilitated by a single school system. (Page 8)

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Accordingly, it is reasonable to expect that the total population of Wake County will exceed 260,000 and that of Raleigh 160,000 by 1980. (Page 9)

The size of the new school unit would enable the board to provide specialized schools and services more economically than either unit as it presently exists. With approximately 48,000 students, various schools -- such as academic, vocational, technical, and others designed to meet specific needs of students -- could be provided without creating an undue financial burden. (Page 42)

The point to be made here is that the growth of Raleigh is following the pattern familiar to most urban areas in the nation: rapid suburbanization and a declining central city. (Page 10)

In other words, the future community will need just about twice as many goods and services as now -- just to maintain the present quality of life. No community service is more important than public education. Providing for educational services in pace with such expansion, in our judgment, could more effectively be done by a single school system. (Page 14)

. . . data reveals changes which have occurred in the relationships between white and nonwhite segments of the population, detailed for Raleigh and non-Raleigh residents. In 1940 and 1950, a sizable majority (21,000) of the nonwhite population was comprised of rural inhabitants, the preponderence (12,000) as which was farm population. By 1960, however, Wake's nonwhite population was evenly divided between Raleigh and the balance of the county. Of the 22,100 nonwhites outside of Raleigh in 1960, only about 7,000 were rural farm while 2,500 were urban residents. Raleigh's nonwhite population during these two decades increased by nearly 40 per cent. These trends are undoubtedly persisting today to the end that Wake's nonwhite population is also becoming progressively more urban. (Page 15)

Over the same era, however, Wake's white population increased nearly four times faster than the nonwhite population. Consequently, Wake is today "more white" than in 1940 or 1950. This is a trend which is expected to continue through the 1980 projections. By 1940, whites as a proportion of the county population will have increased from 74 to 81 per cent, which will mean that the white to nonwhite ratio will change from 3:1 to 4:1 between 1960 and 1980. The implications of these phenomena for changes in the prevailing social organization should be of concern to the Wake community as well as its two school systems.

One visible result of these trends has been the creation of concentrations of Negroes within subcommunities in a relatively few and small geographic areas. (Page 15)

The most striking example, however, was in Raleigh, where about 85 per cent of the city's Negroes lived in that portion of the "inner-city" immediately south and east of the downtown area. (Page 16)

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A healthy process of urbanization-industrialization is the dominant feature of Wake County today. The intent of previous discussion has been to fix attention on this phenomenon and its major implications for public education. If present trends continue, the prospects for a Wake community dominated by the influence of a large metropolitan area would appear excellent. It is probable that whatever historical divisions between city and county remain in the present community, they will continue to diminish in strength in community affairs. One point seems abundantly clear: the Raleigh-Wake community should prepare for an increasingly urban future. (Page 18)

Among all of the difficult problems and stern challenges inherent in coping with urbanization is the question of adjusting community institutions to changing patterns of demand for their functions. Here we are immediately concerned with the institution of public education. The basic adjustment needed in public education for Raleigh-Wake from a community standpoint is the consolidation of city and county schools into one system. This conclusion rests on the judgment that a single school system would have greater capability for responding to the challenges of the urbanizing community. There are several reasons to support this judgment. First, a single school system could deal more comprehensively with the present two marked population and demographic shifts attending urbanization through unified administration and planning. Under the present division there are instances of disharmony and conflicts in school locations and jurisdiction. (Pages 18-19)

Second, a single school system could relate its educational programs more easily to the evolving economic structure of Raleigh-Wake. In the near future, with increasing industrialization, there will be little, if any, difference in the manner in which school graduates will relate themselves to the economic system -- regardless of their residence in Wake County. It is one of the functions of public education to foster the educational preparation of the individual to participate in and compete for the opportunities of the market place. On the other hand, it is to the advantage of the economic structure to have as much new talent and ability as possible developed for its maintenance and growth. These two interests are promoted most efficiently when the two systems are in close step. One school program could pursue these mutual goals more effectively. (Page 19)

Second, a single school system could make it easier to meet racial integration requirements in the schools. Virtually all school desegregation in both the city and county systems has occurred in the predominantly white schools. (Page 19)

School planning within a single district and coordinated with general community planning could result in a superior capability for desegregating schools. (Page 20)

. . . whether the Raleigh-Wake community plans its future development as it would like it to be or merely grows in aimless evolution, public education will continue to be needed in ever-increasing quality. Here again Raleigh-Wake citizens have an option: moving forward in education from a position of strength which a unified single system could provide; or continuing for the foreseeable future the vicissitudes of two school governments under pressure from patrons and each other, friction and controversy along the border as the urban periphery inexorably pushes outward, and dissipation of effort. (Page 21)

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3. CHAPTER 2

Not unlike other residents of areas characterized by geographical and political proximity, the citizens of Raleigh and Wake County face similar economic, social, and cultural conditions. Raleigh, the seat of North Carolina's government, provides many cultural as well as economic opportunities for the citizens of both communities. (Page 23)

It would appear that the Commission [Governor's Study Commision on The Public School System of North Carolina] recognizes that the question of "bigness" will be the outgrowth of rapid urbanization and should not impede the value to be derived from merger even though such a merger will produce large school districts. (Page 24)

Thus, as it affects the organization, board policies and procedures, and the administrative structure, to merge or not to merge "is not the question." The question is, "Will the merger of Raleigh and Wake County school systems provide the children of both systems a more efficient educational program?" (Page 24)

4. CHAPTER 8

The number of buses operated in the county school system and the number used to serve the small annexed area of Raleigh are sufficient to provide adequate service from the standpoint of time en route. The average school bus route one way is less than 17 miles. This distance can be covered in a reasonable time limit. The 246 buses travel a total of 8, 199 miles a day to provide the pupil transportation services for some 17,000 children. The annual mileage of buses over assigned school bus routes is approximately 1,500,000 miles. (Page 255)

5. CHAPTER 9

Major Recommendations

1. The Wake County and Raleigh, North Carolina, school systems should merge so as to provide for an efficient and economically feasible school business management organization. (Page 278)

2. This organization should be headed by an assistant superintendent for business affairs with six departmental directors responsible to him and charged with the responsibility of the day-to-day management of the business affairs of the merged school system. (Page 278)

3. Each director should have under him sufficient technical and clerical personnel to perform adequately the duties assigned. (Page 279)

4. The School system should consolidate its accounting functions and utilize a modern high speed digital computer to provide current control data for all facets of the school organization. (Page 279)

5. The budget procedure of the school system should be modernized and upgraded through greatly increased involvement of all school personnel, other governmental agencies, and lay participation. (Page 279)

6. CHAPTER 10

The survey staff believes that the present state aid program in North Carolina has some weaknesses which should be corrected:

1. The state program of finance does not provide for all essential elements of school costs.

2. Many of the elements of school costs recognized in the program are not adequately provided for to constitute a defensible minimum program.

3. The program is not a bona fide partnership program between the state and local school districts. All local units are not required to make a uniform minimum tax effort for participation in the fund, with considerations being given to variations in the tax-paying ability of local school districts.

4. Funds distributed by the state are earmarked excessively. (Pages 281-82)

Obviously, the weaknesses in state fund distributions cannot be corrected through local legislation. They will have to be handled by general state laws and State Board of Education regulations. These weaknesses should be corrected, however, and the citizens of Wake County and Raleigh should exert their collective influence to the end that this be done whether the two districts continue as separate operations or are merged into a single administrative unit. It should be noted, also, that state funds would not be adversely affected by school district reorganization. No loss in state funds would result. (Page 284)

. . . the taxable property wealth per pupil varies markedly between Raleigh and Wake County school districts. The estimated property wealth per pupil in Raleigh for 1968-69 is approximately 1-1/2 times the per pupil wealth in Wake County. (Page 285)

For school district merger to be acceptable, it must preserve the strong features of both school districts. School services must be equalized to the higher level existing before merger where differences exist. (Page 287)

Whether Raleigh School District citizens should be willing to pay more taxes to improve the level of educational opportunity for Wake County School District pupils is not solely a philosophical question. It has certain practical considerations. Philosophically one could argue that county school district children deserve the same educational opportunities as city children and vice versa. (Page [illegible]

Educational opportunities for children and youth should not be dependent on where they happen to reside within Wake County. Then practically, Wake County and Raleigh comprise a unified social, economic, and cultural area. The concern of Raleigh citizens for the education of Wake County children and the concern of Wake County citizens for the education of Raleigh children should be a very practical one. (Page 2

7. SUMMARY FINANCIAL IMPLICATIONS OF MERGER

Sound principles of school-finance theory dictate that school districts be formed to achieve some measure of financial equality so that pockets of wealth which are presently not being utilized to their full capacity would, as part of a larger or different system, be taxed to increase the total supply of educational revenues available. Stated simply the objective is to increase the supply of financial resources. (Page 300)

It has been commonly accepted for some time that economies of scale exist in education, and it seems reasonable to expect that larger districts will bring with them the greater efficiency due primarily to the advantages of bulk purchasing, and the more efficient utilization of personnel, school facilities, and other resources. Research, by and large, seems to substantiate the existence of such economies. (Page 300)

The existence of the boundary line between county and the city school districts presents a serious deterrent to sound school facilities planning. Because of the ever-present possibility of annexation, school plants in the county often are not located in proper relationship to the population they serve. Distribution of tax revenues for capital outlay and proceeds of bond issues on a basis other than need encourages uneconomical practices in capital outlay expenditures. The merger of the school districts would make possible the more efficient utilization of buildings, transportation equipment, data processing facilities, and both certificated and noncertificated staff personnel. (Page 302)

(Includes K - 12 Only)

COMPARISON OF PROJECTIONS AND ACTUAL STUDENT ATTENDANCE IN RICHMOND SYSTEM UNDER PLAN III IN SEPTEMBER, 1971

[Richmond School Board's Exhibit No. 98 Submitted Following Conclusion of District Court Proceedings]

SCHOOLS	RACE	PROJECTIONS		MEMBERSHIP 9-30-71		MEMBERSHIP 9-1-71		MEMBERSHIP 9-7-71	
		NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
Amelia-Maymont	Black	751	80	561	80	592	79	605	78
	White	182	20	138	20	156	21	167	22
	Total	933		699		748		772	
Baker	Black	392	49	439	79	461	79	462	80
	White	413	51	119	21	119	21	118	20
	Total	805		558		580		580	
Bellemeade	Black	281	38	173	34	186	35	203	37
	White	464	62	333	66	347	65	347	63
	Total	745		506		533		550	
Bellevue	Black	NO	PROJECTIONS	200	54	206	56	214	57
	White			170	46	162	44	162	43
	Total			370		368		376	
Blackwell	Black	1024	80	1252	87	1325	85	1407	86
	White	258	20	191	13	230	15	237	14
	Total	1282		1443		1555		1644	
Bowler	Black	621	68	398	72	453	76	462	73
	White	298	32	158	28	141	24	167	27
	Total	919		556		594		629	
Broad Rock	Black	294	64	205	58	213	58	215	59
	White	167	36	146	42	157	42	150	41
	Total	461		351		370		365	
Carver	Black	346	51	300	73	316	73	317	73
	White	327	49	113	27	117	27	118	27
	Total	673		413		433		435	
Cary	Black	NO	PROJECTIONS	162	50	162	50	170	52
	White			162	50	162	50	160	48
	Total			324		324		330	
Chimborazo	Black	676	67	529	72	553	71	578	71
	White	334	33	201	28	221	29	233	29
	Total	1010		730		774		811	

MEMBERSHIP -- SEPTEMBER 1971

SCHOOLS	RACE	PROJECTIONS NUMBER	PROJECTIONS PERCENT	MEMBERSHIP 8-30-71 NUMBER	MEMBERSHIP 8-30-71 PERCENT	MEMBERSHIP 9-1-71 NUMBER	MEMBERSHIP 9-1-71 PERCENT	MEMBERSHIP 9-7-71 NUMBER	MEMBERSHIP 9-7-71 PERCENT
Clark Springs	Black	355	64	282	69	298	68	311	67
	White	199	36	127	31	143	32	156	33
	Total	554		409		441		467	
Webster Davis	Black	101	52	75	44	78	45	79	44
	White	92	48	94	56	96	55	99	56
	Total	193		169		174		178	
Fairfield Court	Black	326	52	335	75	365	75	385	75
	White	298	48	113	25	121	25	127	25
	Total	624		448		486		512	
Fairmount	Black	348	54	404	81	430	80	438	80
	White	298	46	93	19	105	20	109	20
	Total	646		497		535		547	
Fisher	Black	396	57	292	66	314	67	317	67
	White	303	43	150	34	156	33	154	33
	Total	699		442		470		471	
William Fox	Black	327	61	273	68	286	69	306	69
	White	212	39	126	32	128	31	140	31
	Total	539		399		414		446	
Francis	Black	330	55	324	59	359	59	388	62
	White	268	45	228	41	247	41	235	38
	Total	598		552		606		623	
Franklin	Black	338	49	319	57	329	57	333	56
	White	354	51	236	43	247	43	257	44
	Total	692		555		576		590	
Robert Fulton	Black	218	55	182	49	191	50	202	51
	White	176	45	186	51	190	50	196	49
	Total	394		368		381		398	
Ginter Park	Black	676	72	620	73	660	75	672	75
	White	268	28	224	27	222	25	226	25
	Total	944		844		882		898	

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MEMBERSHIP -- SEPTEMBER 1971

SCHOOLS	RACE	PROJECTIONS NUMBER	PROJECTIONS PERCENT	MEMBERSHIP 8-30-71 NUMBER	MEMBERSHIP 8-30-71 PERCENT	MEMBERSHIP 9-1-71 NUMBER	MEMBERSHIP 9-1-71 PERCENT	MEMBERSHIP 9-[illegible] NUMBER	MEMBERSHIP 9-[illegible] PERCENT
Greene	Black	316	54	311	59	339	61	347	61
	White	270	46	216	41	216	39	225	39
	Total	586		527		555		572	
Patrick Henry	Black	256	40	290	52	300	51	307	53
	White	377	60	273	48	286	49	292	47
	Total	633		563		586		599	
Highland Park	Black	554	65	601	83	625	83	638	84
	White	294	35	123	17	126	17	121	16
	Total	848		724		751		759	
Robert E. Lee	Black	400	69	275	62	309	63	310	63
	White	178	31	169	38	181	37	185	37
	Total	578		444		490		495	
George Mason	Black	676	61	582	82	615	82	602	81
	White	433	39	129	18	132	18	137	19
	Total	1109		711		747		739	
Mary Munford	Black	543	69	523	80	587	81	586	82
	White	247	31	130	20	134	19	133	18
	Total	790		653		721		719	
Morrell	Black	259	71	249	83	256	83	260	83
	White	107	29	50	17	52	17	55	17
	Total	366		299		308		315	
Oak Grove	Black	183	29	246	41	256	41	263	41
	White	439	71	351	59	369	59	379	59
	Total	622		597		625		642	
Reid	Black	298	52	185	59	206	59	205	60
	White	270	48	129	41	147	41	138	40
	Total	568		314		357		343	
Reid	Black	598	57	407	58	473	61	486	62
	White	382	43	291	42	300	39	310	38
	Total	880		698		773		816	

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SCHOOLS	RACE	PROJECTIONS NUMBER	PROJECTIONS PERCENT	MEMBERSHIP 8-30-71 NUMBER	MEMBERSHIP 8-30-71 PERCENT	MEMBERSHIP 9-1-71 NUMBER	MEMBERSHIP 9-1-71 PERCENT	MEMBERSHIP 9-7-71 NUMBER	MEMBERSHIP 9-7-71 PERCENT
Southampton	Black	758	69	444	65	462	67	456	68
	White	348	31	234	35	229	33	211	32
	Total	1106		678		691		667	
Stuart	Black	402	73	383	79	396	79	397	79
	White	151	27	102	21	107	21	108	21
	Total	553		485		503		505	
Summer Hill	Black	344	63	223	60	239	61	252	61
	White	201	37	146	40	156	39	161	39
	Total	545		369		395		413	
West End	Black	401	68	310	72	324	71	328	71
	White	186	32	118	28	130	29	134	29
	Total	587		428		454		462	
Westhampton	Black	264	72	274	79	281	79	285	79
	White	103	28	75	21	74	21	76	21
	Total	367		349		355		361	
Whitcomb Court	Black	542	59	464	69	474	68	503	69
	White	375	41	206	31	223	32	226	31
	Total	917		670		697		729	
Woodville	Black	577	66	390	71	418	72	419	69
	White	303	34	157	29	165	28	187	31
	Total	880		547		583		606	
Elementary Totals	Black	15071	61	13482	68	14333	69	14799	69
	White	9575	39	6207	32	6484	31	6634	31
	Total	24646		19689		20817		21433	
	Black								
	White								
	Total								
	Black								
	White								
	Total								

SCHOOLS	RACE	PROJECTIONS		9-30-71		9-1-71		[illegible]	
		NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	[illegible]	[illegible]
Bainbridge	Black	711	59	615	63	675	62	678	61
	White	489	41	368	37	410	38	427	39
	Total	1200		983		1085		1105	
Binford	Black	513	79	486	83	506	82	513	83
	White	136	21	101	17	111	18	106	17
	Total	649		587		617		619	
Chandler	Black	927	31	856	88	682	88	902	89
	White	213	19	114	12	122	12	116	11
	Total	1140		970		1004		1018	
East End	Black	1288	70	843	64	963	67	[illegible]	[illegible]
	White	556	30	484	36	474	33	[illegible]	[illegible]
	Total	1644		1327		1437		[illegible]	
Elkhardt	Black	391	47	331	46	327	45	334	46
	White	439	53	389	54	404	55	401	54
	Total	830		720		731		735	
Graves	Black	750	70	578	78	684	77	723	[illegible]
	White	314	30	163	22	206	23	211	24
	Total	1064		741		890		[illegible]	
Albert Hill	Black	685	76	525	74	535	74	[illegible]	[illegible]
	White	212	24	189	26	190	26	186	25
	Total	897		714		725		[illegible]	
Mobby	Black	1744	75	1777	88	1871	87	[illegible]	[illegible]
	White	592	25	247	12	285	13	[illegible]	[illegible]
	Total	2336		2024		2156		[illegible]	
Northside	Black	NO	PROJECTIONS	136	60	129	58	136	60
	White			92	40	92	42	[illegible]	[illegible]
	Total			228		221		[illegible]	
Thompson	Black	449	34	388	39	403	39	[illegible]	[illegible]
	White	868	66	603	61	634	61	[illegible]	[illegible]
	Total	1317		991		1036		[illegible]	

MEMBERSHIP -- SEPTEMBER 1971

SCHOOLS	RACE	PROJECTIONS NUMBER	PROJECTIONS PERCENT	MEMBERSHIP 6-30-71 NUMBER	MEMBERSHIP 6-30-71 PERCENT	MEMBERSHIP 9-1-71 NUMBER	MEMBERSHIP 9-1-71 PERCENT	MEMBERSHIP 9-7-71 NUMBER	MEMBERSHIP 9-7-71 PERCENT
Westover Hills	Black	237	40	208	49	230	50	238	50
	White	350	60	219	51	231	50	235	50
	Total	587		427		461		473	
Bellevue	Black			85	52	85	50	88	52
	White	NO	PROJECTIONS	77	48	84	50	82	48
	Total			162		169		170	
Total Middle School	Black	7695	65	6828	69	7302	69	7444	69
	White	4183	35	3046	31	3240	31	3319	31
	Total	11878		9874		10542		10763	
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MEMBERSHIP -- SEPTEMBER 1971

SCHOOLS	RACE	PROJECTIONS NUMBER	PROJECTIONS PERCENT	MEMBERSHIP 6-30-71 NUMBER	MEMBERSHIP 6-30-71 PERCENT	MEMBERSHIP 9-1-71 NUMBER	MEMBERSHIP 9-1-71 PERCENT	MEMBERSHIP 9-7-71 NUMBER	MEMBERSHIP 9-7-71 PERCENT
Armstrong	Black	1126	70	932	74	986	74	1007	73
	White	490	30	328	26	351	26	366	27
	Total	1616		1260		1337		1373	
Huguenot	Black	753	52	532	40	579	41	614	43
	White	703	48	797	60	831	59	816	57
	Total	1456		1329		1410		1430	
Thomas Jefferson	Black	811	59	647	55	689	56	698	56
	White	568	41	524	45	547	44	550	44
	Total	1379		1171		1236		1248	
John F. Kennedy	Black	1229	75	1187	87	1258	88	1313	88
	White	417	25	170	13	175	12	183	12
	Total	1646		1357		1433		1496	
John Marshall	Black	1267	79	1150	76	1281	78	1312	78
	White	342	21	364	24	362	22	374	22
	Total	1609		1514		1643		1686	
Maggie Walker	Black	1170	74	889	77	1000	79	1008	78
	White	403	26	265	23	271	21	281	22
	Total	1573		1154		1271		1289	
George Wythe	Black	1033	57	870	56	937	56	960	57
	White	781	43	693	44	723	44	735	43
	Total	1814		1563		1660		1695	
Total Senior High	Black	7389	67	6207	66	6730	67	6920	68
	White	3704	33	3141	34	3342	33	3307	32
	Total	11093		9348		10072		10227	
	Black								
	White								
	Total								
GRAND TOTALS	Black	30135	63	26517	68	28365	69	29169	69
	White	17662	37	12394	32	12986	31	13260	31
	Total	47797		38911		41351		42429	

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SEPTEMBER, 1971, ENROLLMENT DATA SUBMITTED BY CHESTERFIELD AND HENRICO COUNTIES FOLLOWING CONCLUSION OF DISTRICT COURT PROCEEDINGS

[Chesterfield Exhibit No. 41; Henrich Exhibit No. 40]

Appendix "A"

City of Richmond

	White	Black	Total
Actual Enrollment 1970-71	17,203	30,785	47,988
Actual Enrollment 1971-72	13,500	29,747	43,247
Gain or (Loss)	(3,703)	(1,038)	(4,741)
Projected Enrollment 1971-72	17,462	30,155	47,617
Actual Enrollment 1971-72	13,500	29,747	43,247
Gain or (Loss)	(3,962)	(408)	(4,370)

Chesterfield County

Actual Enrollment 1970-71	21,796	2,267	24,063
Actual Enrollment 1971-72	21,588	2,166	23,754
Gain or (Loss)	(208)	(101)	(309)
Projected Enrollment 1971-72	21,516	2,211	23,727
Actual Enrollment 1971-72	21,588	2,166	23,754
Gain or (Loss)	72	(45)	27

Henrico County

Actual Enrollment 1970-71	31,665	2,805	34,470
Actual Enrollment 1971-72	31,299	3,018	34,317
Gain or (Loss)	(366)	213	(153)
Projected Enrollment 1971-72	32,093	3,045	35,138
Actual Enrollment 1971-72	31,299	3,018	34,317
Gain or (Loss)	(794)	(27)	(821)

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Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-549

THE SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,

Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AND MOTION TO ADVANCE AND FOR PENDENTE LITE RELIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-.....

THE SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,

Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.

MOTION TO ADVANCE AND FOR PENDENTE LITE RELIEF

Petitioners, the School Board of the City of Richmond, Virginia, and the individual members thereof, respectfully move that the Court advance its consideration and disposition of this case. As is stated in the annexed Petition for Writ of Certiorari, issues of national importance are presented which require resolution by this Court sufficiently in advance of the September, 1973 school term to guide the many similarly involved courts and school authorities in planning for the coming school year.

Wherefore, Petitioners pray that the Court:

1. Advance consideration of the Petition for Writ of Certiorari and any response thereto during the current term; and

2. If the Court determines to grant the Petition for Certiorari, arrange such procedures as will permit prompt

decision of the merits as the Court may deem appropriate. If the Court decides to hear argument, it is suggested that the case be considered on the original record. Even though the record is voluminous,[1] the determinative facts in the matter are largely uncontradicted which factor disposes of the need for the time consuming preparation and printing of any lengthy appendix. See *Alexander* v. *Holmes County Board of Education*, 396 U.S. 802 (1969) (accelerated hearing on original record).

Petitioners also seek *pendente lite* relief pending disposition of the Petition for Certiorari comparable to that granted by the Court in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 399 U.S. 926 (1970) and *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 226 (1969), and companion cases, namely, an order providing in substance that:

(1) The respondents shall take such preliminary steps as may be necessary to prepare for the complete implementation of the District Court's order of January 10, 1972, to the end that said order may be implemented by the September, 1973 school year in the event this Court should uphold the District Court on the merits; and

(2) The respondents shall take no steps which are inconsistent with or will tend to prejudice or delay full implementation of the January 10, 1972 order at the commencement of the 1973-74 school term.

---

[1] The separate appendix accompanying the attached Petition for Writ of Certiorari which includes only the opinions below and the relevant state constitutional and statutory provisions is composed of two volumes containing over six hundred pages. The hearings below encompassed over four weeks of trial, involved eight separate groups of parties, included the introduction of more than 325 exhibits, and resulted in a transcript of approximately 3,500 pages.

Such an order is necessary to avoid the possibility that the delay while the case is being reviewed will unnecessarily prejudice the substantive rights of all pupils in the Richmond public schools to be relieved of attending racially identifiable schools. *See Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969).

Respectfully submitted,

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IN THE

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THE SCHOOL BOARD OF THE CITY
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THE STATE BOARD OF EDUCATION
OF THE COMMONWEALTH OF VIRGINIA, ET AL.

TITION FOR A WRIT OF CERTIORARI TO THE UNITED ATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners, the School Board of the City of Richmond, ginia, and the individual members thereof, (hereinafter erred to as the Richmond School Board), pray that a t of certiorari issue to review the decision of the United tes Court of Appeals for the Fourth Circuit, entered in above entitled case on June 5, 1972.

OPINIONS BELOW

The opinions of the courts below directly preceding this tion[1] are as follows:

[1] Earlier proceedings in this case are reported as *Bradley* v. *School of City of Richmond*, 317 F.2d 429 (4th Cir. 1963); 345 F.2d 310 Cir.), *rev'd and remanded*, 382 U.S. 103 (1965).

1. Opinion and order dated August 17, 1970, reported at 317 F. Supp. 555 (directing implementation of interim plan of desegregation in Richmond system for September, 1970) (Appendix hereto 1a).[2]
2. Opinion and order dated December 5, 1970, reported at 51 F.R.D. 139 (directing joinder of various State and County defendants) (48a).
3. Opinion dated January 8, 1971, reported at 324 F. Supp. 439 (denying recusal motions submitted by County defendants) (58a).
4. Order filed January 13, 1971, *nunc pro tunc*, January 8, 1971, unreported (disposing of various pre-trial motions, etc.) (91a).
5. Opinion and order dated January 13, 1971, unreported (disposing of various pre-trial motions) (94a).
6. Opinion and order dated February 10, 1971, opinion reported at 324 F. Supp. 396 (denying three-judge court) (98a).
7. Opinion and order dated February 10, 1971, opinion reported at 324 F. Supp. 401 (denying motion to drop additional parties in individual capacities) (107a).
8. Opinion and order dated April 5, 1971, reported at 325 F. Supp. 828 (directing implementation of desegregation Plan III in Richmond system for 1971-72 school year) (110a).

[2] The appendix of opinions below is printed in separate volumes because of its length.

9. Opinion and order dated July 20, 1971, unreported (denying motion to convene three-judge court) (156a).

10. Order dated September 15, 1971, unreported (denying motion to limit evidence) (163a).

11. Memorandum opinion and order dated January 5 and 10, 1972, respectively, reported at 338 F. Supp. 67 (directing implementation of metropolitan area desegregation plan in Richmond, Henrico and Chesterfield for 1972-73 school year) (164a).

12. Opinion and order dated January 19, 1972, unreported (denying stay of January 10, 1972 Order) (546a).

13. Order of Court of Appeals granting partial stay dated February 8, 1972, reported at 456 F.2d 6 (553a).

14. The opinions of the Court of Appeals reversing the District Court filed June 5, 1972, reported at 462 F.2d 1058, are as follows:

    a. Opinion for the Court by Judge Craven (562a).

    b. Opinion of Judge Winter dissenting (585a).

15. The amended judgment of the Court of Appeals appears at 603a.

JURISDICTION

The opinion of the Court of Appeals was entered June 5, 72, and its amended judgment was filed on August 14, 72. By an order dated August 12, 1972, Mr. Justice uglas granted the Richmond School Board an extension time to file a Petition for Writ of Certiorari from Sep-

tember 5, 1972, to and including October 5, 1972. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

1. The extent to which the effectiveness of relief in *de jure* metropolitan communities may be dependent upon the manner in which a state may choose to align its local school divisions.

2. Under what circumstances the remedial powers of a district court may be limited by existing school division boundaries.

3. Whether, in the formulation of effective relief, district courts are permitted to utilize means coextensive with those used by school authorities in the past to establish and perpetuate a statewide system of dual schools.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This matter involves Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The following relevant Virginia school laws in force prior to July 1, 1971, are set out in the separate Appendix

ereto (604a-613a): Constitutional provisions: Sections 29, 130, 132, and 133; Statutes: Sections 22-1, -2, -7, -30, 34, and -100.1 through -100.12.

The following relevant Virginia school laws which became ffective July 1, 1971, pursuant to the revision of the Constitution of the Commonwealth of Virginia are set out in he separate Appendix hereto (614a-623a): Constitutional rovisions: Article Eight, Sections 1-7; Statutes: Sections 22-1.1, -30, -32, -100.1, -100.3 through -100.11, 126.1, -127, and -21.2.

STATEMENT

1. Introduction

The Richmond School Board is here seeking review of n *en banc* decision of the United States Court of Appeals or the Fourth Circuit reversing in all respects the judgment and order of District Judge Robert R. Merhige, Jr., f the Eastern District of Virginia, which had directed the mplementation of a desegregation plan encompassing three ichmond metropolitan area school divisions. The District ourt had ordered the consolidation of the Henrico and hesterfield County school divisions with the school divion of the City of Richmond, substantially in accordance ith existing provisions of state law, as "a first, reasonable nd feasible step toward the eradication of the effects of e past unlawful discrimination" practiced by the State nd local school authorities involved. (239a) In the majority opinion written by Judge Craven, five members of e Court of Appeals concluded that the District Judge nd exceeded his authority in that, regardless of the relative ffectiveness of alternative desegregation plans presented, e remedial power of a district court could not extend beond existing school division lines absent a showing of

discriminatory purpose or motivation in the establishment or maintenance of such lines or of joint interaction by any two of the three school divisions involved for the purpose of keeping one system relatively white by confining blacks to another.[3] (562a, 572a) Judge Winter, however, viewed the lower Court's decree as embodying the only relief permissible under the Fourteenth Amendment and would have affirmed. (586a)

2. Proceedings Below

This case is an outgrowth of the Richmond school desegregation suit originally filed by black parents and students in 1961, pursuant to 28 U.S.C. § 1343, 42 U.S.C. § 1983, and Section 1 of the Fourteenth Amendment of the Constitution of the United States.[4] The current phase of

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[3] In reaching this conclusion, the Court of Appeals failed to find as clearly erroneous any of what the District Court had viewed as operative facts established by largely uncontradicted evidence, but in some instances substituted its conclusions as to the inferences to be drawn therefrom. This action on the part of the Appellate Court is discussed more fully *infra*, at pp. 44-48.

[4] The case was first tried during 1962 at which time the plaintiffs sought transfers of pupils from Negro public schools to white public schools and, on behalf of all persons similarly situated, an injunction restraining the Richmond School Board from operating racially segregated schools. The District Court approved the individual transfers but refused to grant further injunctive relief and the plaintiffs appealed. The Court of Appeals reversed the order in part, holding that plaintiffs' class were entitled to an injunction restraining the Richmond School Board from maintaining a discriminatory "feeder" system which in effect had perpetuated segregated schools. (317 F.2d 429 [1963]). Again, in 1965, the Court of Appeals upheld a District Court order approving what was in effect a limited freedom of choice plan. (345 F.2d 310 [1965]). This Court, however, vacated the order of the Court of Appeals and remanded the case for consideration of allegations relating to discriminatory faculty allocations, specifically noting that more than a decade had passed since its decision in *Brown v. Board of Education (II)*, 349 U.S. 294 (1955), and that delays in desegregation of school systems could no longer be tolerated. (382

the litigation began in March of 1970 when the plaintiffs, relying upon decisions which this Court had rendered nearly two years previously,[5] again sought the desegregation of the Richmond public school system.

Pursuant to the plaintiffs' motion, a series of hearings was conducted during June and August of 1970 by District Judge Robert R. Merhige, Jr., who entered his initial judgment (317 F. Supp. 555; 1a) finding that the Richmond system was still illegally segregated under freedom of choice in that the various facilities were as to student population and staffs readily identifiable as either black or white schools.[6] (7a-8a) Even though the plan submitted by the Richmond School Board at this time was found not to create a unitary system of schools, Judge Merhige nevertheless accepted it as an interim measure for the 1970-71 school year while at the same time requiring the School Board to come forward with another plan at a later date.[7] (38a-41a)

With the implementation of the "Interim Plan" in September, 1970, however, the City school system experienced a 300 per cent increase in the normal rate of attrition of its white students. Stating that complete and effective relief could not be provided within the City alone, the Rich-

U.S. 103, 105 [1965]). During the school years 1966-67 through 1969-70, the schools in the City of Richmond were operated under a freedom-of-choice plan pursuant to a consent decree entered by the District Court in March of 1966.

[5] *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968); *Monroe* v. *Bd. of Comm'rs.*, 391 U.S. 450 (1968); *Raney* v. *Bd. of Educ.*, 391 U.S. 443 (1968).

[6] In his opinion, Judge Merhige made extensive findings regarding the existence and effects of *de jure* segregation within the City of Richmond alone. (8a-13a)

[7] The Richmond public schools were operated under the "Interim Plan" for the duration of the 1970-71 school year in that the District Court on January 29, 1971, declined to order any further relief in the middle of the school year. 324 F.Supp. 456.

mond School Board on November 4, 1970, filed a motion under Fed. R. Civ. P. 19 to compel the joinder of parties needed for a just adjudication with a view of presenting a plan of desegregation which would encompass the major portion of the Richmond metropolitan area. Hearings were conducted regarding this new aspect of the case following which the District Court on December 5, 1970, granted the Richmond School Board's motion and directed the plaintiffs to file an amended complaint (51 F.R.D. 139; 48a) which was accomplished on December 14, 1970.[8] Numerous motions, hearings and District Court orders intervened prior to the trial of the matter which did not commence until mid-August of 1971.[9]

---

[8] The specific defendants eventually joined under the District Court's order and the plaintiffs' amended complaint were as follows: The Virginia State Board of Education and the individual members thereof; the State Superintendent of Public Instruction; the School Boards of the Counties of Chesterfield and Henrico and the individual members thereof; the Division Superintendents of Schools of Chesterfield and Henrico Counties; and the Boards of Supervisors of the Counties of Chesterfield and Henrico and the individual members thereof. These parties collectively will be referred to as the "State and County defendants."

In their amended complaint, the plaintiffs realleged certain portions of their complaint as originally filed in 1961, including the basis for federal jurisdiction in the matter as previously noted *supra*, at p. 6.

[9] On January 4, 1971, the County defendants filed a motion for recusal and joined with the State defendants in moving for a dismissal of the amended complaint. At the January 8, 1971 hearings on these motions, at which time Judge Merhige delivered his opinion denying the recusal motion (324 F. Supp. 439; 58a), the State and County defendants submitted a number of additional motions. On January 13, 1971, the District Court issued orders disposing of many of these pre-trial motions and directing the State and County defendants to answer the amended complaint. (91a; 94a) All defendants submitted answers to the amended complaint on January 15, 1971, and the Richmond School Board in conjunction with its answer filed a cross-claim reasserting allegations made in its motion for joinder and specifically requesting relief in the form of consolidation of the Richmond, Chesterfield and Henrico school divisions. On February 10,

Even though the metropolitan phase of the case had been substantially advanced, the Richmond School Board still was under an outstanding order of the District Court to come forward with a plan for additional desegregation of the City schools for the 1971-72 school year.[10] On April 5, 1971, Judge Merhige ordered the Richmond Board to implement its "Plan III" for the 1971-72 school year within the City. (325 F. Supp. 828; 110a) Since the metropolitan phase of the case was then pending, the District Court was careful to note that its decision was "based upon the assumption that the city will [in 1971-72] operate as it has heretofore, as a single administrative unit for school purposes." (110a) Judge Merhige further noted that his conclusions were made entirely without consideration of the issues involving the State and County defendants previously joined in the metropolitan phase of the case. (110a, n. 1) Finally, Judge Merhige cautioned that his approval of the Richmond plan was conditioned upon its ultimate effectiveness as "[t]he Constitution is satisfied only when an integration plan 'works' in practice and not merely on paper." (148a-149a)

Concurrently with the trial of the issues involving the metropolitan relief, the Richmond School Board was opening its schools under "Plan III." Once again in September, 1971, figures indicated a substantial acceleration in white

1971, the District Court entered its memorandum opinions and orders denying State and County motions for a three-judge court and for the dropping of parties in their individual capacities. (324 F.Supp. 396, 401; 98a; 107a) Other pre-trial motions submitted by the State and County defendants were subsequently disposed of by Judge Merhige on July 20 and September 15, 1971. (156a; 163a)

[10] Pursuant to a report submitted to the District Court in November of 1970, the Richmond School Board on January 15, 1971, filed alternative plans for the additional desegregation of the City schools for the coming school year. Hearings on the proposals were conducted in the District Court on March 4, 1971.

attrition within the Richmond system in that of the approximately 17,500 white students anticipated to enroll, only 13,500 actually were in attendance.

On January 10, 1972, Judge Merhige issued his opinion (338 F. Supp. 67; 164a) and filed his order (536a) directing the September, 1972 implementation of the Richmond School Board's metropolitan desegregation plan which embodied the consolidation of the school divisions of Richmond, Henrico and Chesterfield substantially in accordance with provisions of State law.[11] The District Court based its order on extensive findings of discriminatory practices including the following illustrative determinations that:

(1) state and local officials had "by their actions directly contributed to the continuing existence of the dual school system which now exists in the metropolitan area of Richmond." (379a);

(2) "desegregation of the schools of the city and the counties as well cannot now be achieved within the current school division bounds" owing in substantial part to the deliberate deferral by the state and local authorities of plaintiffs' constitutional rights. (207a);

(3) the minimum size school district required "to eliminate the effect of state-imposed segregation, would be that of the division created by the merger of the systems of Richmond, Henrico and Chesterfield." (434a);

(4) "[t]he school division lines here . . . have never been obstacles for the travel of pupils under various schemes, some of them centrally administered, some of them overtly intended to promote the dual system." (193a);

[11] These provisions are discussed *infra*, at pp. 33-34.

(5) "[t]he State Board has been deeply implicated in the administration of . . . programs, which were operated completely independently of the wishes of local school officials and resulted in mass movement of pupils across political boundaries in the Richmond area . . . to the extent that it was necessary to appeal to local school boards to confer in order to coordinate the exchange of pupils." (194a);

(6) "[t]he existing [political subdivision lines] have no relation to natural obstacles or substantial governmental interests, but they are related to strict housing segregation patterns, maintained by public and private enforcement and owing their genesis in substantial part to the manner in which the three school divisions have been operated and expanded. Thus by the maintenance of existing school division lines the State advantages itself of private enforcement of discrimination and prolongs the effects of discriminatory acts of its own agents." (195a-196a);

(7) "[t]he proof here overwhelmingly establishes that the school division lines between Richmond and the counties here coincide with no natural obstacles to speak of and do in fact work to confine blacks on a consistent, wholesale basis within the city, where they reside in segregated neighborhoods." (196a); and

(8) regarding the school construction policies of the three school divisions, "[t]he longer term impact of [these policies] has been the exaggeration of the racial disproportion between the city and the two neighboring counties. This has come about by virtue of the maintenance of school division lines as obstacles to pupil assignment for purposes of desegregation while the area's housing patterns, when its population grew, became increas-

> ingly segregated. The continued operation of the schools of each subdivision as racially identifiable facilities moreover necessarily caused each new school and old ones as well to take on the label of a black or white school." This process led to the racial identifiability of the entire systems in issue, with the Richmond system being identifiable as a black one, and that of each county perceivably a white system. (200a-201a)

Applications for a stay of the District Court's order were sought in that Court and denied by Judge Merhige on January 19, 1972. (546a) The Court of Appeals, however, by order dated February 8, 1972, granted a partial stay of Judge Merhige's order pending its disposition of the case on appeal. (456 F.2d 6; 553a)

Following arguments before the Court of Appeals on April 13, 1972, that Court by a five to one vote, on June 5, 1972, filed its opinion reversing the District Court's order. (462 F.2d 1058; 557a)

3. Characteristics Of The Richmond, Henrico And Chesterfield Metropolitan Area

A.

Geography, Demographic Patterns And General Interdependence

The City of Richmond, along with the Counties of Henrico and Chesterfield form the major part of the Richmond Standard Metropolitan Statistical Area.[12] The City of Rich-

[12] As of 1963, the Census Bureau included Hanover County as a part of the Richmond SMSA, which is thus currently composed of the four political subdivisions. At no point is Hanover County contiguous with the City of Richmond, and the substantial part of the County is largely rural in nature. Approximately 9,600 students, 78 per cent of whom are white, attend schools in the Hanover system which number is relatively small in comparison to the enrollments in the other three

mond (63 square miles) occupies the approximate geograpical center of the region, while the Counties of Henrico (244 square miles) and Chesterfield (445 square miles) completely surround and are contiguous with the City at all points north and south of the James River respectively. There are no distinct geographical features or man-made barriers[13] which separate the City from either Henrico or Chesterfield. (401a-402a, 195a)

The Richmond, Henrico and Chesterfield metropolitan area covers a total of 752 square miles, and according to the 1970 Census contains a total of 480,840 persons.[14] Richmond's population totaled 249,621 while the totals for Henrico and Chestefield were 154,364 and 76,855, respectively. (401a-402a) The great majority of Henrico and Chesterfield citizens live in the urban-suburban portions of the respective Counties most closely contiguous with the City of Richmond.

The District Court found that there is a substanial community of interest and general interdependence between citizens in Richmond, Henrico and Chesterfield as demonstrated by such indices as area-wide employment, retail sales, commuter traffic patterns and inter-jurisdictional utility services. Recreational, educational, cultural, transportation and hospital facilities used by the metropolitan

political subdivisions in the Richmond SMSA. In 1967, consultants commissioned by Henrico and Chesterfield to study the Richmond area noted the substantially lesser degree of interdependency between Hanover and the other three components of the Richmond SMSA.

[13] *E.g., Davis* v. *Board of School Comm'rs. of Mobile County*, 402 U.S. 33 (1971).

[14] Concerning the size of the consolidated school division as well as the approximately 104,000 pupils it would contain, Judge Winter noted that Virginia had six school divisions each encompassing more than 700 square miles, as well as another school division, Fairfax County, which enrolled over 135,000 students, or at least 30,000 more than would be enrolled in the proposed Richmond, Henrico and Chesterfield school division. (600a, n. 16)

population are concentrated largely within the City of Richmond. The City is the central economic element in the region as it is the major place of employment, the center of commerce, as well as the situs of the majority of area manufacturing activity and retail sales. (402a-416a)

In 1959 and again in 1967, separate independent consultants studied the Richmond metropolitan area and submitted reports noting the marked interdependence and community of interest between the three jurisdictions. Each report contained general conclusions to the effect that the solutions to many of the local problems could best be accomplished on an area-wide basis through the elimination of the jurisdictional limitation imposed by the existence of the three political subdivisions within the single metropolitan area. (402a-405a)

The percentage of the total black population in the Richmond metropolitan area remained stable over the 30-year period from 1940 (28 per cent) to 1970 (26 per cent). In 1970, however, approximately 84 per cent of the metropolitan black population was confined within the City of Richmond. From 1940 through 1960, the total number of blacks residing in Henrico decreased, and a similar phenomenon occurred in Chesterfield during the period from 1960 to 1970.

B.

PATTERNS OF RACIAL COMPOSITION OF METROPOLITAN AREA SCHOOLS, 1954-1971

(1)

Richmond Schools

During the 1954-55 school year, Richmond enrolled 35,857 students with a racial composition of 20,259 white (56.5 per cent) and 15,598 black (43.5 per cent) students. (417a) From 1954-55 through 1966, the school facilities

within the City of Richmond remained all-white or all-black in a manner identical to enrollment patterns prior to 1954.

In September of 1969, the racial composition of the Richmond School system was 70.5 per cent black and 29.5 per cent white. (416a)

In the thirteen month period from September, 1970, to the end of September, 1971, during which City school officials implemented two desegregation plans, approximately a third of the white student enrollment which originally had been expected to attend Richmond schools in the beginning of the 1970-71 term had left the system. (417a)

As the result of an annexation of a portion of Chesterfield by the City of Richmond which, for school purposes, did not become effective until the end of the 1969-70 school year, the City system anticipated a significant influx of white students for the 1970-71 term.[15] In planning for the opening of its schools in September of 1970 under the newly approved "Interim" desegregation plan, the Richmond School Board thus anticipated a racial mix of 60 per cent black and 40 per cent white, but of the 20,400 whites expected, only 17,203 actually enrolled. (167a, 417a) During the 1970-71 school year under its first plan of substantial desegregation, the Richmond system was 64.2 per cent black and 35.8 per cent white. (417a)

Based on the pupil membership during the 1970-71 school year, a student population of 63 per cent black and 37 per

[15] A number of Chesterfield County schools ranging in student enrollment from 92 to 100 per cent white became a part of the Richmond system pursuant to the annexation decree. A total school population of approximately 8,135 students, 97.5 percent of whom were white, was included within the territory acquired by the City of Richmond. Of this total, however, only 4,581 white students from the annexed area were actually enrolled in the City system as of September of 1970. (178a)

cent white was projected for the 1971-72 school year as the Richmond system prepared to operate under "Plan III." As of September 24, 1971, however, the student enrollment in the Richmond system reflected a total of 43,247 pupils with a racial composition of 69 per cent black and 31 per cent white. Of the 17,462 white student enrollment which had been projected for that year, only 13,500 actually enrolled. (417a)

Over the period from the 1954-55 school year through the 1969-70 school year, the white student population in the Richmond system fell roughly 40 per cent from a total of 20,259, or 56.5 per cent to a low of 12,622 or 29.5 per cent. (416a-417a) Even with the addition of a substantial number of white students pursuant to the 1970 annexation, the white student enrollment in the Richmond system as of September, 1971, was rapidly approaching the 1969 low.[16]

During the corresponding period, the black student population in the Richmond system increased from 15,598 to 30,097, or nearly a 100 per cent rise over the fifteen-year span. (417a)

As of September, 1971, the Richmond system with a racial composition of 69 per cent black and 31 per cent white, operated 55 facilities of which 47 were majority black. Thirty of these schools were in excess of 70 per cent black and of those, 11 were in excess of 80 per cent black. Richmond high and middle schools such as Walker, Armstrong, Kennedy, Mosby and Graves and elementary schools such as Baker, Blackwell, Fairmount, Mason and Norrell which were built as all-black schools and remained

[16] Tentative 1972-73 enrollment figures for the Richmond system apparently indicate that approximately 1,500 to 2,000 whites who attended City schools in the 1971-72 term did not return this year. This additional loss was alleviated somewhat by the enrollment of approximately 800 whites who came from Chesterfield secondary schools pursuant to the 1970 annexation decree.

all-back through 1969-70, ranged from 72 to 88 per cent black in 1971-72 notwithstanding the successive implementation of extensive plans of desegregation.

(2)

Chesterfield Schools

In the school year 1953-54, Chesterfield enrolled 9,132 students with a racial composition of 7,429 white (79.6 per cent) and 1,903 black (20.4 per cent) students. (418a)

During the 1961-62 school year, there were 85.1 per cent white and 14.9 per cent black students attending Chesterfield schools, whereas, by the 1970-71 school year, the pupil population of Chesterfield was 90.6 per cent white and 9.4 per cent black. Over that nine-year period, the total pupil membership rose from 15,596 to 24,063 even though Chesterfield lost approximately 8,000 students to the City of Richmond pursuant to the 1970 annexation.

For the 1971-72 school year, Chesterfield enrolled a total of 23,754 students with a racial composition of 21,588 white (90.9 per cent) and 2,166 black (9.1 per cent) students. (418a)

Over the period from the 1953-54 school year through 1971-72, the overall percentage of blacks in the Chesterfield school system thus fell from 20.4 per cent to 9.1 per cent.

(3)

Henrico Schools

In 1953-54, Henrico schools enrolled 13,142 students with a racial composition of 11,771 white (89.6 per cent) and 1,371 black (10.4 per cent) students. (418a)

In 1970-71, the pupil population in Henrico was 91.9 per cent white and 8.1 per cent black. Over the ten-year period from 1960-61 to 1970-71, the Henrico pupil population rose from 24,059 to 34,470. (417a)

During the 1971-72 school year, Henrico enrolled 34,317 students in 43 facilities with a racial composition of 31,299 white (91.2 per cent) and 3,018 black (8.8 per cent) students. (417a)

In the period from 1953-54 to 1971-72, the over-all percentage of blacks in the Henrico school system thus fell from 10.4 per cent to 8.8 per cent.

C.

Richmond, Henrico And Chesterfield Schools As A Metropolitan System

In 1961-62 the combined Richmond, Henrico and Chesterfield school divisions enrolled a total of 82,761 students with a racial composition of 54,948 whites (66.4 per cent) and 24,813 blacks (33.6 per cent). In June of 1971, there were a total of 106,521 students attending schools in the three divisions with an over-all racial composition of 70,664 whites (66.3 per cent) and 35,857 blacks (33.7 per cent). (418a) Although the total number of students attending schools in the combined area over the past ten years has increased by nearly 24,000, the over-all racial composition of the three divisions has varied only one-tenth of one per cent which contrasts sharply with the substantial shifts in the racial compositions of the separate divisions. The Richmond system has shifted from 57.9 per cent white in 1953-54 to a current figure of nearly 70 per cent black, while the County systems over the corresponding period have experienced substantial increases in white student enrollment and decreases in the over-all percentage of black student enrollment.

Speaking in terms of a single metropolitan school system, the Richmond, Henrico and Chesterfield area during the 1971-72 school year served approximately 103,000 students

in 132 schools with an over-all racial composition of approximately 65 per cent white and 35 per cent black students. (417a-418a)

As of June, 1972, there were approximately 36,308 black students in the Richmond, Henrico and Chesterfield systems of whom 31,149 or 85.8 per cent attended schools within the City of Richmond. Approximately two-thirds of the 31,149 or more than 20,000 black students attended 30 City schools which were in excess of 70 per cent black. These 30 City schools served approximately 56 per cent of all black students in the Richmond, Henrico and Chesterfield metropolitan area. In contrast, the County systems during the 1970-71 school year operated a total of 47 facilities which were 90 per cent or more white. (524a-529a)

For many years, Richmond, Henrico and Chesterfield have participated in joint programs designed to meet the educational needs of the entire metropolitan school community which could not otherwise have been made available by any of the divisions on a separate basis.[17]

The Richmond School Board operates two facilities located wholly, in the case of Kennedy High School, or partly, in the case of Fairfield Court Elementary, in Henrico County. Both schools historically have had all-black student enrollments. (388a)

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[17] Currently, pupils from Richmond, Henrico and Chesterfield are being transported by school buses provided by each of the three divisions to joint schools as follows: (1) branches of a cooperative training center for mentally retarded children, one of which is in northern Henrico and another of which is located in the area which Richmond gained from Chesterfield pursuant to the 1970 annexation; (2) a math-science center also located at the same facility in northern Henrico; and (3) a technical center located within the City of Richmond. (358a)

There are a number of instances where virtually all-black Richmond schools and all-white Henrico schools are located only short distances from one another.[18] (428a-429a)

4. Evidence Establishing The Continuing Effects Of The Constitutional Violations By The State And Local Authorities

Both the Richmond School Board and the plaintiffs presented detailed evidence in the District Court concerning the magnitude and continuing effects of racial discrimination in the operation of public schools as it has been practiced by the local and state school authorities both prior to and after this Court's decision in *Brown* v. *Board of Education (I)*, 347 U.S. 483 (1954). This evidence not

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[18] The following comparisons are illustrative of this phenomenon:

Richmond Schools 1970-71	*Henrico Schools 1970-71*	*Distance Miles*
Kennedy High School 93% black	Henrico High School 96.1% white	4.9
John Marshall High School 73% black	Henrico High School 96.1% white	1.4
Mosby Middle School 95% black	Fairfield Junior High School 81.9% white	3.6
East End Middle School 68% black	Fairfield Junior High School 81.9% white	3.6
Fulton-Davis Elementary 53% black	Montrose Elementary 100% white	1.8
Mason Elementary 100% black	Adams Elementary 86.4% white	3.1
Highland Park Elementary 90% black	Glen Lea Elementary 99.8% white	1.3
Stuart Elementary 91% black	Laburnum Elementary 79.6% white	2.2

only concerned discrimination in pupil assignments, but also involved discriminatory practices in school site selections and construction policies, discriminatory allocation of faculties in the individual systems, as well as a myriad number of policies and programs deliberately designed to perpetuate racial segregation for more than a decade beyond *Brown I*. Detailed evidence also was presented supporting the following lower Court findings: that the desegregation of schools within each of the three school divisions was pathetically incomplete at the time of the hearings in this case; (237a) that the State and local defendants had failed to utilize powers possessed under State law to eradicate the vestiges of the dual system of schools in the face of actual knowledge of the consequences of such inaction; (233a-235a, 258a-259a) that the opposition on the part of State and local officials to assignments of students across existing school division lines for the purpose of school desegregation was, at least in part, racially motivated; (212a, 230a, 258a) and that the State and local authorities promoted segregation through the utilization of the assignment of pupils across existing school and political subdivision boundaries as well as the employment of principles underlying the consolidation of school districts. (193a-195a, 352a-356a) Testimony and other evidence also demonstrated the causes, effects and interaction between the rigid school and housing segregation in the Richmond, Henrico and Chesterfield metropolitan area.

The District Court analyzed the voluminous evidence before it and made exhaustive findings of fact both in its earlier opinions relating to the Richmond phase of the case (1a, 110a) and with regard to the metropolitan phase in its January 5th opinion. (164a) Although many of these findings were based on uncontradicted evidence, the Court

of Appeals made no reference to the substantial majority of them.[19]

A.

STATE POLICIES AND PRACTICES

In contrast to the Court of Appeals' reliance upon Virginia's tradition of local control of its public schools, Judge Merhige made significant findings regarding this State's centralized administration of various programs designed to perpetuate segregated schools well beyond 1954. (313a-331a) Findings were made regarding the deep implication of the State school authorities in the administration of programs which were operated completely independently of the wishes of local school officials and often involved the movement of pupils across school division lines in order to perpetuate the dual system of schools. (313a-331a) Substantial sums were paid to Richmond, Henrico and Chesterfield residents in the form of tuition grants or pupil scholarships from the time of *Brown I* up until 1970 in order to avoid integration. (329a) There were also laws requiring a complete takeover on the part of State authorities in cases where any black enrolled in an all-white school. (316a-318a, 533a-536a)

The District Court found that the purposeful, centrally compelled policy of segregation was vigorously pursued in the State of Virginia for many years subsequent to this Court's 1954 declaration of the illegality of laws requiring

[19] The Court of Appeals, however, did agree with Judge Merhige's findings that there had been both state and federal action within the City of Richmond tending to entrench and perpetuate patterns of racial segregation throughout the City. (572a) The Court also agreed with the District Court's finding that there had been State action within the Counties of Henrico and Chesterfield as well which restricted the location of black residences. (572a)

such segregation in public education, and that the long-term foreseeable effect of this policy manifested itself through the persisting racial identifiability of the area's schools. (258a) The District Judge noted that even at this late date, the abandonment of such a position had been gradual, piecemeal, intentionally reluctant and was less than total. (258a) Judge Merhige further found that during this entire period, the State Board of Education had dutifully and hastily communicated to local school authorities the most recent state enactments designed to frustrate desegregation; whereas, by contrast, during the years from 1965 to date, during which the State Board in order to avoid the cutoff of federal funds had executed a compliance agreement with HEW, it had failed to disseminate to local school authorities the substance of the requirements of even the most important decisions of this Court in the field of school desegregation. (350a) The District Court found that for the major part of the 17-year period from *Brown I* to date, the State of Virginia's primary and subordinate agencies with authority over educational matters had devoted themselves to the perpetuation of a policy of racial separation in the public schools. (215a) Thus, the District Court concluded that the segregation which endured past 1954 had severely complicated the task of disestablishment and had created a situation where the elimination of racially identifiable facilities in the City and County systems had become impossible of attainment. (237a)

At the same time the State school authorities were adhering to the foregoing policy through either action or inaction on their part, the various school and governmental officials in the Richmond, Henrico and Chesterfield metropolitan area were actively discriminating against blacks in education, housing and employment.

B.

LOCAL POLICIES AND PRACTICES

(1)

Richmond

In his initial opinion in the Richmond phase of the case on August 17, 1970, Judge Merhige included a detailed set of findings indicating the degree to which freedom of choice had failed to remove the racial identity of the substantial majority of the public schools within the City system. (6a-8a) Also included within that opinion were extensive findings on the magnitude of illegal residential segregation as it existed within the City and its interrelationship with school segregation. (8a-13a) Judge Merhige specifically found that prior State laws which had required racial segregation in housing and schools, had long term effects which had not been diminished by the earlier lifting of the formal restrictions. (10a)

Thus, even though matters pertaining to the desegregation of the Richmond system had been litigated throughout the 1960's, by the end of the 1969-70 school year approximately 52,000 students were enrolled in schools within the City which were segregated in virtually the same manner as they had been in 1954.[29] Faculty and staff desegregation also had not been accomplished. (7a-8a) The District Court con-

[29] As of May 1, 1970, seven high schools were operated within the City of which three were 100 per cent black, three were 99.3 per cent, 92 per cent, and 81 per cent white and the remaining one was 68 per cent black. Also, at that time on the middle school level, two 100 per cent black schools, three others that ranged from 99.9 per cent to 69 per cent black, and three that were over 91 per cent white were operated within Richmond. On the elementary level, seventeen City schools were 100 per cent black, four others were in excess of 99.3 per cent black, two were 100 per cent white, and thirteen others ranged upward from 90 per cent white. (6a)

cluded that there was little doubt that Richmond "had not achieved a unitary system as required by law." (7a)

As noted *supra*, at p. 7, the District Court in approving the Richmond School Board's first significant plan of desegregation for the 1970-71 term, cautioned that the plan could be operated only on a temporary basis owing to the substantial number of virtually one-race schools remaining at the elementary level. During the 1970-71 year, approximately 9,000 blacks in the City system attended thirteen schools which were at least 90 per cent black; additionally, Richmond operated four all-white elementary facilities. (36a)

(2)

Chesterfield

Chesterfield schools were operated on a completely segregated basis for at least twelve years following this Court's decision in *Brown I*. During the school years 1966-67 through 1969-70, the student body at one of the County's secondary schools was 100 per cent black and its faculty over 90 per cent black, while during the 1968-69 school year there were nine schools with all-black student enrollments even though blacks in Chesterfield represented only 10 per cent of the County's total school population. (524a-526a) In July of 1968, Chesterfield was threatened with the termination of all federal aid owing to a deficient plan for desegregation of its schools, and only then did Chesterfield authorities propose a total plan of desegregation which was not to take effect until September of 1970. (382a)

In the 1970-71 school year, Chesterfield operated six elementary schools which were 99 per cent white with two of these being 100 per cent white. (526a) At the same time and against the background of a system that was less than 10

per cent black, the Matoaca Lab Elementary facility which had been operated jointly with Virginia State College remained at 99 per cent black even though it was within reasonable pairing distances of Bensley and Curtis, 99 per cent white schools. (384a-385a, 526a) Also, at that time two of Chesterfield's intermediate facilities were in excess of 97 per cent white. (525a)

In 1969-70 there were nine Chesterfield County schools without a single black on their faculty, while during the same year fourteen facilities including three of County's largest high schools had only one black faculty member. (524a-526a) Throughout the 1970-71 school year, six Chesterfield facilities were without any black faculty members and nine schools had only a single black on their staff. (524a-526a) By way of contrast, in the same year the Matoaca Laboratory School in Chesterfield had a 100 per cent black faculty. (384a, 526a)

As late as August 20, 1971, Chesterfield had a policy of receiving and transmitting State funds to Virginia State College for the support of Matoaca Lab School which at that time remained an all-black facility. Additionally, Chesterfield provided bus transportation for pupils attending that school. (386a)

The District Court also made extensive findings regarding the general discrimination which persisted in all aspects of Chesterfield practices and policies of which the following are representative: it maintained a number of inferior all-black schools even during the 1960's, and black administrators were often demoted upon the closing of such schools; (380a-382a, 377a) the Chesterfield County governing body had, as late as five years after the *Brown I* decision, stated its opposition to any integration of schools whatsoever and urged State authorities to hold the line against school

integration; (379a) through the 1969-70 school year, Chesterfield operated an all-black secondary school whose attendance zone constituted the entire County; (383a) Chesterfield political leaders openly called upon County residents to revolt rather than participate in school integration involving that County and the City of Richmond; (412a-413a) Chesterfield County has had no public housing authority; public employment in Chesterfield over the years has been available almost exclusively to whites; (510a) most Chesterfield administrative jobs are manned entirely by whites, with blacks occupying at best menial positions; (514a) and blacks in Chesterfield have settled in small, contiguous cells rather than in any widely dispersed pattern throughout the County as a whole. (511a)

(3)

Henrico

Henrico schools as well were totally segregated well into the mid-1960's. A major secondary school which served the entire County remained all-black until it was closed at the end of the 1968-69 school year. (389a) In September of 1966, Henrico school authorities informed State school authorities that the County would not cooperate with HEW in the matter of faculty desegregation. (343a) The State authorities took no action upon this notification, and in 1968 were advised by HEW that federal funds for the Henrico school system were being terminated owing to its having submitted an inadequate and ineffective plan for accomplishing the elimination of its dual school system. (344a) Only in the face of pending HEW enforcement proceedings, did Henrico finally adopt a desegregation plan which was not to commence until September of 1969.

(393a) Pursuant to its new plan, Henrico at the beginning of the 1969-70 school year closed five formerly all-black schools and black principals were generally demoted to lesser jobs. (393a-394a)

During the 1970-71 school year, Henrico still operated 14 of 30 elementary facilities with a racial composition of 99 per cent or more white with six of these remaining 100 per cent white. (529a) Against the background of a system that was less than 10 per cent black, Henrico school authorities the same year placed 40 per cent of the County's total black elementary enrollment in one school, Central Gardens, which was more than 90 per cent black and within two miles of all-white elementary schools. (395a, 529a) This concentration was not alleviated until after the commencement of the trial below (395a-396a), and the method used placed the principal burden of transportation upon the black students attending grades 1-5 at Central Gardens. At least five of Henrico's elementary schools, Crestview, Lakeside, Montross, Ratcliffe and Sandston which were built as all-white schools were still 100 per cent white during the 1970-71 term. Henrico also operated Tuckahoe Junior High which was 98.6 per cent white and Freeman High School, the County's largest, remained 99.3 per cent white during the 1970-71 school year. (527a-529a)

Even though the Superintendent of Henrico Schools admitted that one of the indicia of racial identifiability was the faculty composition of a particular school, numerous Henrico schools during the period from 1966-67 through 1970-71 were without any black faculty members whatsoever. (397a) During the 1969-70 term, twenty-three Henrico schools had only one black faculty member while four facilities had no blacks whatsoever. (527a-529a) In the 1970-71 school year the number of Henrico facilities

without any black faculty members had increased to ten, while twenty schools had only one black. (397a, 527a-529a)

Reassignment of faculty in an effort to eliminate the racial identifiability of many of the Henrico schools was not undertaken until after the County officials had been joined as parties in this case. (397a) During the 1971-72 school year, twenty-five facilities in Henrico had only one black faculty or staff member, and the District Court was unable to determine how many of these were classroom teachers. (397a)

Similar to its extensive findings of general discrimination in Chesterfield, the District Court made the following conclusions regarding Henrico: HEW officials had charged in the early part of 1968 that Henrico had made insufficient progress toward school desegregation in that County school authorities were maintaining small inadequate all-black schools and the program at the all-black secondary school was demonstratively inferior to that being offered at other schools in the system; (392a) housing patterns in Henrico were segregated, and the blacks that were able to move into that County settled principally into small colonies; (506a) Henrico County has had no public housing authority or programs, nor any rent supplement programs; (510a) and public employment in Henrico over the years has been available almost exclusively to whites. (510a)

c.

State And Local Discrimination In School Site Selection And Construction

Throughout the period from 1954 to 1971, each of the school divisions with the support and authorization of the State school authorities pursued programs and policies of

discriminatory school site selection and construction. (204a-207a) The District Court's findings with regard to City practices have been detailed elsewhere. See *Bradley* v. *School Board of City of Richmond*, 324 F. Supp. 456 (E.D. Va. 1971). With regard to the Henrico and Chesterfield systems, the District Judge made a finding that new school construction was planned for black schools years after *Brown I* without regard to the possibility of accommodating the black pupil population in white schools. (204a)

In discussing the role of the State school authorities in such policies and programs, the District Court found that decisions on school locations as well as the expansion of existing facilities in the three metropolitan systems were matters for central as well as local control. (210a) The District Judge further found that the approval of State school authorities was required for the site selection for any new facility by the various localities. (284a) Not until 1968 did the State school authorities caution all local superintendents to consider the effect on desegregation of new school construction; however, this advice was never incorporated into State procedures for review of construction proposals, and the contribution that each new proposal would have made to the elimination of the dual school system was not considered. (286a) Current State Department of Education regulations concerning school facility site selection do not, in either recommendations or binding regulations, refer to desegregation. (289a)

The Superintendent of Chesterfield schools was unaware of the 1968 memorandum distributed by the State school authorities, and the District Court found that none of the Chesterfield schools including those under construction at the time of the trial had been planned with a view toward assisting the desegregation of the various County schools

through a strategic location of the site. (312a) The District Court also concluded that Henrico school authorities had, without exception, likewise ignored desegregation requirements in planning and constructing new schools. (298a-299a)

As a result of these programs and policies pursued at both State and local levels, the District Court concluded that the perpetuation of the racial identifiability of the particular facilities while each system expanded by means of the creation of new schools planned for one race or the other, had greatly assisted in the creation of prevailing housing segregation and thereby further entrenched existing school segregation. (207a) Judge Merhige concluded that such school construction policies contributed substantially to the current segregated conditions within each of the three school systems, and specifically found that the longer term impact of the same policy had been the accentuation of the racial disproportion between the City school system and those of the two Counties. (200a) In viewing the over-all process, the District Court found that the continued operation of the schools of each subdivision as racially identifiable facilities necessarily caused each new facility and old ones as well to take on the label of a "black" or "white" school, and that this process had led to the current racial identifiability of the entire system in issue—the Richmond City system identifiable as black, and that of each County as white. (200a-201a)

The District Judge in making the above findings regarding the extensive discrimination which had been practiced by the various State and local agencies from the period following this Court's decision in *Brown I* up until the trial of this matter, concluded that the long years of the mainte-

nance of the dual system, as well as the massive and effective State-managed efforts to oppose desegregation under free choice assignment plans had caused more and more facilities in the area to become segregated by a process of white withdrawal and black occupation. (230a) These factors together with forces containing blacks in the City, were found to have produced a community school system divided into racially identifiable sectors by political boundaries. (230a) In discussing the rapid progression of racial disproportion between the City and each of the County systems, Judge Merhige found that the desegregation of Richmond as well as Henrico and Chesterfield schools could not be achieved within the current school division boundaries owing in substantial part to the long and continued deferral of plaintiffs' constitutional rights which had been deliberately practiced on the part of the appropriate State and local authorities. (207a)

5. Desegregation Plan Approved By District Court

When it initiated the metropolitan phase of this case, the Richmond School Board advised that it was preparing a desegregation plan for all schools in the Richmond, Henrico and Chesterfield metropolitan area. The amended complaint filed by the plaintiffs pursuant to the lower Court's order of December 5, 1970, included a specific request that the District Court require all defendants to prepare and submit a desegregation plan for the combined divisions as well as a prayer for relief through the consolidation of the three systems, or, alternatively, through a contractual exchange of pupils between the separate divisions. In spite of ample opportunity, however, none of the State and County defendants suggested any desegregation plan in lieu of the

one developed by the City school authorities.[21] (359a) The Richmond School Board's metropolitan desegregation plan was thus the only one before the District Court at the time of its decision.

The plan itself embodied most of the tools of desegregation specifically approved by this Court in *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971). The plan envisioned the consolidation of the Richmond, Henrico and Chesterfield school divisions into a single entity which would be administered and operated by a centralized school authority pursuant to provisions of State law many of which have existed at least since 1954.[22] (430a)

Under the Richmond metropolitan desegregation plan, the entire area would be divided into six geographical sub-

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[21] As early as April of 1971, in an attempt to avoid delays in the event the plan proposed by the Richmond School Board were ultimately approved, the District Court advised the State and County defendants to confer with the City school administration for purposes of resolving problems incident to the implementation of the metropolitan desegregation plan which City authorities were then preparing. During the trial in the District Court, however, it became apparent that neither the State nor County defendants had expended any effort or time in suggesting improvements to the plan or in developing any alternative proposals. It was not until after the record in his matter had been transmitted to the Court of Appeals that the State and County defendants in applying for a stay in that Court suggested an alternative method of assignment involving a contractual exchange of pupils between the three school divisions.

[22] Under laws in effect prior to July 1, 1971, at which time the Revised Constitution of Virginia and its implementing legislation became effective, the State Board of Education had the unfettered power to create school divisions comprised of more than one political subdivision. (§ 22-30; 607a) Under the current laws, however, the State Board of Education may act only upon the request of the school boards with the concurrence of the governing bodies of the affected school divisions in consolidating or otherwise altering such divisions. (§ 22-30; 617a) Where a single school division comprising more than one political subdivision has been created in this manner, the supervision of such a division must be vested in a single school board and a division superintendent selected by that board. (§§ 22-

divisions each with a student population varying from approximately 17,000 to 20,000.[23] (430a, 432a) Certain administrative and curriculum decisions would be delegated to a separate board for each subdivision. (430a)

The plan would eliminate all one-race schools in the Richmond metropolitan area with racial compositions ranging from 17 to 40 per cent black. No school in the Richmond,

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100.1, -32; 617a-618a) Current State law also requires adherence to a definitive scheme of school board representation and consolidated division administration and operation:

> specific provisions govern (1) the composition, appointment and terms of members of a school board of a division composed of two or more political subdivisions; (§ 22-100.3; 618a) (2) the qualification and duties of the consolidated division board members; (§ 22-100.4; 610a) (3) the corporate status of such a board and its general powers; (§ 22-100.5; 610a) (4) the compensation of the board members; (§ 22-100.6; 620a) (5) the transfer of title to school property; (§ 22-100.7; 620a) (6) the State Board's responsibility for promulgating rules and regulations for the financial plan of operation of the consolidated division schools; (§ 22-100.8; 611a) (7) the formula for the allocation of operating costs, capital outlay and the incurring of indebtedness for school construction; (§ 22-100.9; 621a) (8) the designation of the fiscal agent for the consolidated division; (§ 22-100.10; 612a) and (9) the effective date for the formation of the board and its assumption of the supervision and operation of all schools within the consolidated division. (§ 22-100.11; 612a)

With the exception of the statute, requiring local initiative and consent, the District Court in its January 10, 1972 order specifically directed that the creation and operation of the single school division consisting of the City of Richmond and the Counties of Henrico and Chesterfield be accomplished in conformity with these provisions of Virginia law. (538a-540a)

Current Virginia school laws contain no affirmative requirement that a school division conform to political subdivision boundaries.

[23] The exception to this general configuration is Subdivision 6 which is comprised of the southern portion of Chesterfield County, a relatively sparsely populated area containing approximately 9,000 students. (419a)

Henrico and Chesterfield division would have a racial composition substantially disproportionate to the over-all composition of the area-wide school population (65 per cent white and 35 per cent black). As a starting point in the development of the metropolitan plan, the Richmond School Board utilized this over-all ratio in attempting to formulate an effective remedy. *E.g., Swann, supra,* 402 U.S. at 24-25; *North Carolina State Board of Education* v. *Swann,* 402 U.S. 43, 46 (1971). The racial compositions determined for the individual facilities under the metropolitan plan were devised also with a view toward attaining a maximum degree of stability in the consolidated division.

The District Court, in referring to the ratios used by the Richmond School Board, noted that variations might be unavoidable, and further admonished all parties that it did not intend to require a particular degree of racial balance or mix. (519a) Even though (1) the ratios used were those of the City Board, (2) the Board's plan was the only one before the lower Court, and (3) the District Judge had specifically stated his readiness to entertain proposed modifications to the plan (432a, 519a-520a), as, for example, the contractual exchange of pupils in lieu of consolidation, the Court of Appeals viewed the relief as imposing a fixed racial quota and held that it was beyond the power of the District Judge to impose any particular degree of racial balance as a matter of substantative constitutional right. (570a) The Court of Appeals, in discussing the proposed racial composition of the schools under the metropolitan plan, found, however, that the evidence seemed to indicate its workability in practice. (570a) Judge Winter disagreed that the basis for the relief was a desire on the part of the District Court to achieve as much racial balance

as possible. In his view, the District Court was within its remedial equitable discretion under *Swann* in considering racial ratios as a part of the relief decreed. Judge Winter found that the range of racial ratios among the various subdivisions of the consolidated division, as well as among the various schools within the subdivisions, was sufficient proof that the basis of the majority's opinion was without support. (602a)

The substantial majority of students would attend a school located within the particular subdivision wherein they reside, and in no case would there be assignments between non-contiguous subdivisions. Approximately 36,000 students would be exchanged between the City system and the two Counties, with about 1,000 more whites than blacks being involved in this central city-suburban exchange. (423a) No exchange is contemplated between students residing in the more rural portion of southern Chesterfield (Subdivision 6) and those in the City of Richmond. (425a-426a)

Approximately 68,000 pupils were transported to school by yellow buses by the three school divisions operating independently during the 1971-72 school year. Under the metropolitan desegregation plan, approximately 78,000 students would be transported from home to school, with 42,000 of these attending schools in their neighborhood zone of residence. (423a)

Also, during the 1971-72 school year the three school divisions operated a total of over 600 yellow buses, and of this amount only 524 would be necessary to meet the transportation requirements of the metropolitan plan. (424a) Travel times and distances compare favorably with those experienced presently in each of the three school divisions

ndependently. (422a-424a) The State and County defend-nts conceded, and the Court of Appeals agreed, that this as not a busing case. (563a, n.2)

REASONS FOR GRANTING THE WRIT

Introduction

The Richmond School Board submits that this case merits eview on certiorari for two principal reasons. First, as is emonstrated in Part I, the decision of the Court of Appeals annot be reconciled with either applicable decisions of this ourt or the rationale of other federal courts in dealing ith related issues.

Secondly, as developed in Part II, issues of critical sig-ificance with respect to school desegregation in *de jure* etropolitan areas are presented. The manner in which ese questions are resolved will be largely determinative of e effectiveness of relief afforded in these areas.

I.

he Decision Of The Court Of Appeals Is Irreconcilable Both With Applicable Decisions Of This Court And With Rationale Utilized By Other Federal Courts In Related Cases.

The incompatibility of the opinion of the Court of ppeals with decisions of this Court manifests itself in ree significant areas: the standard for assessing the nctity of existing school division lines and the existence a constitutional violation; the drastic limitations placed previous guidelines established by this Court for the olding of effective relief; and the significant departure om the accepted standard of review in school desegrega-on cases.

Furthermore, the reasoning employed by the Court of Appeals is at odds with that of other federal courts which have considered similar issues.

A.

COURT OF APPEALS' TEST FOR ASSESSING THE SANCTITY OF EXISTING SCHOOL DIVISION LINES AND THE EXISTENCE OF A CONSTITUTIONAL VIOLATION IS PREDICATED ON A JUDICIAL STANDARD EXPRESSLY REJECTED BY THIS COURT

It is clear that in evaluating the sanctity of the existing school division lines in this case, the Court of Appeals as it had done in *Wright* v. *Council of City of Emporia*, 442 F.2d 570, 572-74 (4th Cir. 1971) and *United States* v. *Scotland Neck City Board of Education*, 442 F.2d 575, 577, 582 (4th Cir. 1971), focused on the purpose and motivation underlying the initial establishment and maintenance of such lines:

> "It is not contended by any of the parties or by amici that the establishment of the school district lines more than 100 years ago was *invidiously motivated*. We have searched the 325-page opinion of the district court in vain for the slightest scintilla of evidence that the boundary lines of the three local governmental units have been maintained either long ago or recently for the *purpose* of perpetuating racial discrimination in the public schools." (571a) [emphasis added]
>
> "But neither the record nor the opinion . . . even suggests that there was ever joint interaction between any two of the units involved (or by higher state officers) for the *purpose* of keeping one unit relatively white by confining blacks to another." (572a) [emphasis added]
>
> "The facts of this case do not establish . . . that state establishment and maintenance of school districts coterminous with the political subdivisions of the City

of Richmond and the Counties of Chesterfield and Henrico have been *intended to circumvent* any federally protected right." (580a) [emphasis added]

Having found no such invidious purpose or motivation, the Court of Appeals concluded there was no constitutional violation, hence the District Court was without authority to act. (581a)

This Court in *Wright* v. *Council of City of Emporia*, ... U.S. ....., 92 S.Ct. 2196 (1972), however, made it clear that "effect" was controlling and that any inquiry into purpose or motivation was as irrelevant as it was fruitless in that the existence of permissible purposes cannot otherwise sustain actions that have an impermissible effect. *Emporia, supra*, 92 S.Ct. at 2203.

By way of contrast, the Court of Appeals made only an enigmatic reference to the "consequence" of the maintenance of the three separate school divisions[24] (580a) and failed even to allude to the lower Court's extensive findings as to the crippling effects of holding existing school division lines inviolate with regard to the disestablishment of the dual school system in Richmond community. Although the Court of Appeals did not have the benefit of this Court's decisions in *Emporia, supra*, and *United States* v. *Scotland Neck City Board of Education*, ... U.S. ..... 92 S.Ct. 2214 (1972), at the time of its decision, its opinion, if allowed to stand, would constitute a significant departure

[24] The Court of Appeals concluded that there was no "unconstitutional consequence" of the maintenance of the Richmond, Henrico and Chesterfield school divisions as separate entities in that there was no federally protected right to racial balance within even a single school district. (580a) In so holding, the Court of Appeals failed to refer to the abundance of lower Court findings regarding constitutional violations by the State and local defendants nor did it mention the remedial guidelines established in the most significant decisions of this Court. See *infra*, at pp. 40-44.

from the now well-established "effect oriented" standard of judicial inquiry applicable to this and related cases.

B.

COURT OF APPEALS' JUDGMENT EFFECTIVELY THWARTS THE GUIDELINES FOR THE MOLDING OF EFFECTIVE RELIEF AS ESTABLISHED IN PRIOR DECISIONS OF THIS COURT

As this Court noted in *Emporia, supra*, 92 S.Ct. at 2202, the Court of Appeals apparently did not consider that case to be governed by the principles of *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968) and *Monroe* v. *Board of Commissioners*, 391 U.S. 450 (1968). The same general critique is fully applicably to its decision here in that the Appellate Court failed to reconcile its conclusions with no less than four key objectives previously established by this Court. Instead, the application of its rationale places rigid limitations on these guidelines with dire consequences to the future of school desegregation in *de jure* metropolitan areas.

"Effectiveness" has been firmly established as the measure of any desegregation plan.[25] Yet under the decision of the Court of Appeals, irrespective of its relative effectiveness, the alternative metropolitan desegregation plan involving assignments across existing school division lines, was adjudged to have been beyond the scope of the lower Court's remedial power absent proof of invidious racial purpose or motivation in the establishment or maintenance of those lines. The District Court's conclusions as to the relative effectiveness of the metropolian plan were not disputed by the Court of Appeals which, instead, noted that in his concern for effective relief the District Judge had

[25] *E.g., Davis, supra*, 402 U.S. at 37; *Wright* v. *Council of City of Emporia*, 92 S.Ct. 2196, 2203 (1972).

overlooked limitations upon his remedial powers. (563a) If after years of extensive litigation the relief which has been afforded consists of no more than the establishment of a substantially all-black system in the face of a viable and feasible alternative which promises realistically to work in providing equal educational opportunity, the promises of *Brown I* will in reality have little meaning to school children in the Richmond, Virginia community.

This Court also has made it clear that the objective in the development of any desegregation plan should be the attainment of the greatest possible degree of actual desegregation and the elimination to the extent feasible of all vestiges of the dual system of schools.[26] Again, the overwhelming evidence accepted by the District Court was that attempts to desegregate within the City limits of Richmond were futile exercises doomed to failure which paled in comparison to the realistic expectations provided by the City Board's metropolitan plan. (207a-208a, 230a, 237a, 239a-240a) The consequence of the judicial standard adopted by the Court of Appeals, however, presents a stark contrast between what will and what could occur: the promise of substantially all-black schools within the City surrounded by substantially all-white schools in the Counties with the attendant community and student perceptions of "black" and "white," inferior and superior, schools, compared with the District Court's remedy which promises realistically to erase the racial identifiability off schools in the area and to remove all vestiges of the dual school system which do in fact persist in the Richmond metropolitan area today.

This Court has also made it clear that in desegregating schools district courts and school authorities as well have

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[26] *Davis, supra*, 402 U.S. at 37; *Swann, supra*, 402 U.S. at 15; *cf. Green, supra*, 391 U.S. at 437-38.

a duty to consider all available options and alternatives, selecting the plan which holds the greatest expectation of working in practice. *See, e.g., Green, supra,* 391 U.S. at 439. This mandate was limited by the Court of Appeals, however, to the extent that the District Judge could not consider alternatives which involved either the inter-divisional exchange of pupils or the consolidation of school districts even though he had found compelling factors and circumstances requiring such relief.

Regarding such available alternatives, it is important to note that Virginia law has never forbidden the contractual exchange of pupils between separate school divisions and for many years there has been a legislatively conceived plan for the consolidation of school districts consisting of more than one political subdivision. (227a-229a, 607a-613a, 618a-621a) Even though the present law requires the consent of the local governing bodies and school boards prior to a consolidation, (228a, 617a) it is axiomatic that the enjoyment of fundamental constitutional rights cannot be made to depend upon popular consent[27] and that state laws which serve as impediments or barriers to the effective disestablishment of dual school systems are not binding on a district court formulating effective relief.[28] Moreover, the lower Court simply required and ordered the State and County defendants to exercise powers which have been expressly granted to them by State law. (538a-540a)

Similarly, the Court of Appeals made no reference to the statements of this Court to the effect that the most potent

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[27] *E.g., Lucas* v. *Forty-Fourth Gen. Assembly of Colorado,* 377 U.S. 713, 736-37 (1964); *Haney* v. *County Bd. of Educ. of Sevier County,* 410 F.2d 920, 925 (8th Cir. 1969).

[28] *North Carolina State Bd. of Educ.* v. *Swann,* 402 U.S. 43, 45 (1971).

weapons for the dismantling of dual school systems lie in the revision of school districts and attendance areas. *Brown* v. *Board of Education (II)*, 349 U.S. 294, 300-01 (1955).

From the analogy which this Court has drawn between the molding of relief in school desegregation and antitrust cases,[29] it is clear that the plan should, to the extent feasible, prevent the reoccurrence of the evils sought to be corrected. The District Court, concerned over the resegregation of the City system, found ample support in the evidence establishing a 35 per cent loss of white students within 12 months under the two-Richmond only desegregation plans. Yet the Court of Appeals without even alluding to the District Judge's conclusion as to the lack of any chances for effective relief within the City system, established a standard which as applied to this case will insure a return to the situation which existed in 1954, i.e., substantially all-black center-City schools surrounded by substantially all-white schools in the suburbs.

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[29] As this Court has made abundantly clear with regard to the techniques to be employed in the construction of equitable remedies, the duty of a court is to fashion a remedy which not only eradicates the effects of past evils, but also insures the prevention of the continuation or repetition of discriminatory practices in the future. *Louisiana* v. *United States*, 380 U.S. 145, 154, 156 (1965). That this doctrine is particularly applicable in school desegregation cases is evidenced by a parallel drawn in *Green* between remedial techniques appropriate in remedying illegal school segregation and those utilized in various antitrust cases. *Green, supra*, 391 U.S. at 438, n. 4. In this regard, it should be noted that in the area of antitrust remedies, this Court has been careful to point out that in order to be entitled to relief, the complaining party need only show that the existing decree leaves a substantial likelihood that the practice condemned has not been satisfactorily eliminated. *United States* v. *E. I. duPont De Nemours & Co.*, 366 U.S. 316, 331-32 (1961). It is thus apparent that this Court in determining the appropriate scope of relief in a desegregation case, saw the need for a decree which would not only insure the eradication of all the vestiges of the past unlawful segregation, but also preclude the revival of such effects.

If the remedial guidelines established under this Court's prior decisions have no more meaning than the decision of the Court of Appeals foretells, such a pronouncement should be made by this Court

C.

COURT OF APPEALS' DECISION WAS BASED ON "NEW" FINDINGS ACHIEVED THROUGH A SIGNIFICANT DEPARTURE FROM THE STANDARD OF APPELLATE REVIEW IN SCHOOL DESEGREGATION CASES

This Court has made it clear that the weighing of facts and circumstances to determine their effect upon the process of desegregation is a delicate task that is aided by the sensitivity of the trier of facts to local conditions, and that the judgment with respect thereto is primarily the responsibility of the District Court.[30] From a comparison of the Court of Appeals' opinion with the record, however, it is clear that in critical areas, the Appellate Court substituted its evaluation of the evidence for that of the District Judge. The nature of this petition allows reference to only a few examples.

In concluding that the desegregation of schools by the three school districts involved was pathetically incomplete, (237a) the District Court had considered voluminous evidence relating to the actual operation of the Richmond, Henrico and Chesterfield schools for many years including the term which had concluded in June of 1971, approximately two months prior to the hearings below.

In phrasing the issue in its terms, the Court of Appeals in the initial paragraph of its opinion implicitly assumed the operation of unitary systems by all three school divisions

[30] *E.g., Council of City of Emporia, supra*, 92 S.Ct. at 2205, *citing Brown II, supra*, 349 U.S. at 299.

involved.[31] (562a) However, no party, including the Richmond School Board, contended that the City had achieved a unitary system during the 1970-71 school year. The basis for such an assumption by the Appellate Court is thus unclear. Moreover, as is implied in subsequent portions of its opinion, the Court of Appeals agreed that neither Henrico nor Chesterfield had attained a unitary system during the 1970-71 year, the last school year for which data was available. The Appellate Court stated that with the discontinuation by Chesterfield of its connection with Matoaca Laboratory School (which occurred subsequent to the 1970-71 school year)[32] and Henrico County's announced plan to reassign the 40 percent of its total black elementary enrollment which had attended Central Gardens during the 1970-71 school year, the systems had become unitary. (571a-572a) Remarkably, the Court of Appeals made this assumption without reference to any of the other non-unitary features considered by the District Judge such as the racial identifiability of faculties and the gross examples of racial isolation in other schools (384a, 397a, 524a-529a), and, indeed, without the benefit of relevant data subsequent to the 1970-71 school year.

It is apparent from the opinion of the Court of Appeals that it was troubled by the size of the proposed consolidated school district and by problems of finance and budgeting

[31] In Judge Winter's view, he probably would not have dissented "were the case as simple as described in the opening paragraph of the majority opinion. . . ." (585a, n. 1)

[32] During the hearings below, Chesterfield school authorities announced they would discontinue participation in the joint operation of the all-black Matoaca Laboratory School to the extent required to remove this non-unitary facility from their system. The record fails to disclose what changes were made as to the operation of that facility subsequent to the 1970-71 school year, and the fact of its continued operation by some other State agency in lieu of Chesterfield passed without comment by the Court of Appeals. (385a-386a)

which in its opinion were sufficient to "boggle the mind." (578a) Suffice it to point out that after weighing the extensive evidence presented on all such aspects of the proposed metropolitan desegregation plan, the District Court concluded that the optimal size of any school district was largely dependent on the objectives sought to be obtained (having before it evidence of the eminently successful operation of the Fairfax, Virginia school system consisting of more than 135,000 students), and that in all respects the weight of the testimony from the educational experts established that the proposed plan was reasonable, feasible and workable. (432a) In addition, the District Court had considerable evidence before it that many of the very features that the Court of Appeals found disturbing had proved workable in the operation of State-authorized joint schools as well as all-black regional schools; (352a-356a) indeed, the existence of detailed Virginia laws governing the operation of school divisions consisting of more than one political subdivision (608a-613a, 618a-621a) surely indicates that such problems were not considered insurmountable by this State's own lawmakers. The Richmond School Board is unaware of any school desegregation case to date which upholds the substitution by an appellate court of *new* conclusions regarding elements of the feasibility of desegregation plans when substantial evidence supports contrary findings made by a district court.

In other instances, the Court of Appeals seized upon one item of evidence relating to a certain point and drew conclusions different from those of the District Court without reference to any of the other evidence on the same issue. As a significant example, the Appellate Court focused upon the testimony of one County official relating his interpretations of the findings of a questionnaire submitted to

students to determine the number who had previously attended the City schools. The testimony, designed to establish that relatively few County students ever had attended Richmond schools, convinced the Court of Appeals that the evidence failed to establish that the City's white students were fleeing to County schools. (573a) On this issue, the District Court had weighed a considerable amount of evidence establishing the losses of whites from the City system including the testimony in question and, with respect to the results of the specified questionnaire, the record indicated that the official was unable to give any detailed information as to the scope, extensiveness and degree of participation by County students. In addition, the Superintendent of the County involved had previously admitted that his staff had been confronted with the problem of white parents and students from Richmond giving false County addresses and renting unoccupied apartments for the purpose of gaining admission to the substantially all-white schools in the County. (383a) Certainly, it is doubtful that students engaging in such activities would candidly answer any questionnaire exposing their actions. Further, the questionnaire obviously failed to reflect the degree of white attrition occasioned by parents moving to the Counties so that their children could be initially enrolled in County schools. This further explanation of the record upon which the District Court relied is fully illustrative of the danger inherent in any departure from the accepted standard of judicial review of factual determinations.

On the question of the effects of admitted racial discrimination by all three political subdivisions in housing and the admitted refusal of the Counties to take steps necessary to allow the construction of low-cost or rent-subsidized housing, the Court of Appeals concluded that it was "unable to

determine whether such discrimination, practiced in all three units, has had any impact upon movement by blacks out of the city and into the counties." (574a)

The District Court's conclusions in this area were predicated on voluminous evidence and testimony providing a reasonable basis for its determinations that discrimination in housing, school site selection and construction, public employment, and County inaction in failing to provide low-cost housing had operated to contain blacks within the City of Richmond and had served to accentuate the extreme racial disparity between the City and the Counties. (195a-211a)

These illustrative intrusions upon the normal standard of appellate review pose significant consequences in the handling of school desegregation cases and merit review by this Court.

D.

COURT OF APPEALS' RATIONALE VARIES WITH THAT UTILIZED BY OTHER FEDERAL COURTS IN RELATED CASES

Though factually distinguishable, the issues presented herein are closely akin to those dealt with in *Emporia* and *Scotland Neck* as well as other cases dealing with the attempted creation of splinter school districts. After pointing out that it was unfortunately predictable that a court which had approved the dismantling of existing school districts so as to create smaller whiter enclaves had now rejected the consolidation of school districts to make effective the mandate of *Brown I* and its progeny, (585a-586a) Judge Winter made the following comparison:

> "While the district court attempted to distinguish these cases, the fact is that they are simply the obverse of the same coin which is presented here. In each of *Scotland Neck* and *Emporia*, the effect of splitting the

school district was further to delay and hinder the achievement of what would otherwise have been a unitary system in the original district, although arguably there were noninvidious reasons for subdividing. Here, as I view the case, the question is one of consolidating school districts *within the framework of state law* in order to eradicate the effects of past discrimination and to achieve a unitary system. Logically it is impossible to sustain the former and not condemn the converse." (585a, n. 1)

As noted by this Court in *Emporia*, the reasoning of the Court of Appeals differed materially from that utilized by other federal courts which had prohibited the carving out of "white enclaves" based not on the motive or purpose underlying the actions taken by the respective school authorities, but on the *effect* of such practices.[33] As pointed out, *infra*, at p. 53, other federal courts currently wrestling with problems of metropolitan school desegregation are similarly focusing on effect. If the Court of Appeals' decision is left undisturbed, the result would be productive of the following incongruity: that in the splinter district cases the actions of State and local school authorities would be judged in terms of their effect on the dismantling process, whereas such a test would be irrelevant in prescribing the circumstances under which a district court may require either the assignment of students across existing school division lines or the merger of existing districts in accordance with provisions of state law in order to alleviate the

[33] *Council of City of Emporia, supra*, 92 S.Ct. at 2203, *citing Lee* v. *Macon County Bd. of Educ.*, 448 F.2d 746, 752 (5th Cir. 1971); *Stout* v. *Jefferson County Bd. of Educ.*, 448 F.2d 403, 404 (5th Cir. 1971); *Haney, supra*, 410 F.2d at 924; *Burleson* v. *County Bd. of Election Comm'rs.*, 308 F.Supp. 352, 356 (E.D. Ark), *aff'd*, 432 F.2d 1356 (8th Cir. 1970); *Aytch* v. *Mitchell*, 320 F.Supp. 1372, 1377 (E.D. Ark. 1971)

effects of past discrimination. The criteria should be the same, however, since in both instances the school boundaries affect the dismantling process by serving as barriers to effective desegregation.

The severe limitation on the remedial powers of the District Court occasioned by the Court of Appeals' reliance on both Virginia tradition and the Tenth Amendment to the Constitution of the United States to sanctify existing school division lines (575a-580a) is in sharp contrast with the view of the United States Court of Appeals for the Eighth Circuit as expressed in *Haney* v. *County Board of Education of Sevier County*, 410 F.2d 920, 924-25 (8th Cir. 1969):

> "If segregation in public schools could be justified simply because of pre-*Brown* geographic structuring of school districts, the equal protection clause would have little meaning. . . .
>
> State legislative district lines, congressional district and other state political subdivisions have long ago lost their mastery over the more desired effect of protecting the equal rights of all citizens. . . . (*citing Gomillion* v. *Lightfoot*, 364 U.S. 339 [1960])
>
> Political subdivisions of the state are mere lines of convenience for exercising divided governmental responsibilities. They cannot serve to deny federal rights." (*citing Reynolds* v. *Sims*, 377 U.S. 533 [1964]; *Hall* v. *St. Helena Parish School Bd.*, 197 F.Supp. 649, 658 [E.D. La.], *aff'd*, 287 F.2d 376 [5th Cir. 1961], *aff'd per curiam*, 368 U.S. 515 [1962])

The Court of Appeals made no reference to the District Court's finding that the existing school division lines were redrawn as late as July 1, 1971, pursuant to the requirements of the revised State Constitution which took effect on the same date. (229a) This express reaffirmance of the

esent school division lines had the uncontradicted effect a state-approved separation of an existing 70 per cent ck school division (Richmond) from the two 90 per cent ite school divisions surrounding it. Furthermore, this drawing occurred at a time when the State was under a ar and continuing duty to take whatever steps might be cessary to eradicate all vestiges of its dual system of ools.[24] The failure of the Court of Appeals to even nsider this a proper point of inquiry cannot be squared th the rationale of the Eighth Circuit in *Haney* that [I]t would be sheer fantasy to say that the school districts Sevier County could be realigned today in the same nner that they were in 1948 and still comply with the nstitutional mandate of *Brown I* and *Brown II*." *Haney*, *ra*, 410 F.2d at 924.

With regard to the force and effect of Virginia's consent uirement regarding the consolidation of separate school tricts, the Court of Appeals mistakenly felt it necessary hold such a limitation unconstitutional if the plan ap-ved by the lower Court were to be affirmed. (575a, 577a-a) In so doing, it ignored the basic constitutional tenant t the enjoyment of rights under the Fourteenth Amend-nt cannot be made dependent on popular consent.

> "The argument that 'equal protection' rights must depend upon the majority vote has never found foothold under our form of constitutional government. Democratic government under our Constitution respects the majority will, but our forefathers had sufficient vision to insure that even the many must give way to certain

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See, e.g., Smith v. *North Carolina State Bd. of Educ.*, 444 F.2d (4th Cir. 1971); *United States* v. *Jefferson County Bd. of Educ.*, F.2d 836, 846-47 (5th Cir. 1966), *aff'd en banc*, 380 F.2d 385, *denied*, 389 U.S. 840 (1967); *United States* v. *Texas*, 321 pp. 1043, 1052 (E.D. Tex. 1970), *aff'd* 447 F.2d 441 (5th Cir.), *cert. denied*, 92 S.Ct. 675 (1972).

fundamental rights of the few." *Haney, supra*, 410 F.2d at 925.

Also ignored by the Court of Appeals was the settled principle that the remedial powers of a district court cannot be limited by provisions of state law. *Haney, supra; United States* v. *Greenwood Muncipal Separate School District*, 406 F.2d 1086, 1094 (5th Cir.), *cert. denied*, 395 U.S. 907 (1969).

Resolution of these fundamental variances in approach is urgently needed. Indeed, if the rationale utilized by the Court of Appeals here is accepted by this Court, the numerous federal courts currently wrestling with detailed issues concerning metropolitan school desegregation would need to make only the threshold inquiry as to purpose and motivation in the establishment of existing school division lines. If no such invidious purpose or motivation were shown, the courts and school authorities would be spared the time-consuming, detailed inquiry made by the District Court in this case; however, as pointed out *supra*, at pp. 40-44, an affirmance of the Court of Appeals would require substantial modification of the remedial guidelines which this Court has previously established.

II.

This Case Presents Issues Of Critical Significance With Respect To Future School Desegregation

This Court has not as yet established definitive guidelines as to the circumstances under which pupil assignments across existing school district lines may be required or the circumstances under which such lines may or must be altered to insure the complete and effective eradication of all ves-

tiges of a state-mandated dual system of schools.[25] Since a number of lower courts are confronted with related questions at the present time,[26] the manner in which the issues

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[25] The Chief Justice of this Court recognized the need to resolve this particular issue over two years ago in stating that "[a]s soon as possible . . . we ought to resolve some of the basic practical problems when they are appropriately presented including . . . to what extent school districts and zones may or must be altered as a constitutional matter. . . ." *Northcross* v. *Board of Educ. of Memphis, Tenn. City Schools*, 397 U.S. 232, 237 (1970) (concurring opinion).

[26] Issues relating to relief from central city school segregation based on a metropolitan area-wide approach are not unique to this case. Other district judges have specifically held that desegregation plans confined to central cities alone could not realistically provide the type of relief required under this Court's decisions in *Green* and *Swann*. While there are many other of such cases in various stages of litigation, only a few of the major ones are discussed here.

In a suit involving the Detroit, Michigan school system, the District Court found that relief from school segregation could not be effectively provided by any of the intra-city plans which had been presented to it, and that the only realistic plan for desegregation of the City system would require the assignment of students between a number of city-suburban school districts existing in the Detroit metropolitan area. *Bradley* v. *Milliken*, No. 35257 (E.D. Mich. S.D. March 24 and 28, June 14, 1972). *See also Bradley* v. *Milliken*, 338 F.Supp. 582 (E.D. Mich. S.D. 1971) (findings as to illegal school segregation existing within Detroit school system which necessitated judicial intervention). In a similar suit brought to desegregate the schools of Indianapolis, Indiana, the District Judge there found that the city schools were illegally segregated, that any plan of desegregation confined to the city system alone would not work in affording a realistic remedy, and that suburban school districts in the Indianapolis metropolitan area would have to be joined as parties to the action. *United States* v. *Board of School Comm'rs. of City of Indianapolis*, 332 F.Supp. 655 (S.D. Ind. 1971). Also, this Court has refused to hear questions presented by one of the newly joined suburban school districts regarding the propriety of the joinder action. *School Town of Speedway* v. *Dillin, cert. denied*, ... U.S. ....., 92 S.Ct. 2457 (1972). Similar questions have arisen in a case involving the Atlanta, Georgia school system. See *Calhoun* v. *Cook*, 332 F.Supp. 804 (N.D. Ga. 1971), where the District Court noted that at the time the case was originally filed in 1958, the Atlanta system was approximately 70 per cent white whereas at the time of its decision, there had been a complete reversal

presented here are resolved will be largely determinative of the effectiveness of desegregation not only in Richmond, Virginia, but in many other *de jure* metropolitan areas as well.

A.

THE EXTENT TO WHICH EFFECTIVENESS OF RELIEF IN DE JURE METROPOLITAN AREAS MAY BE DEPENDENT UPON THE MANNER IN WHICH A STATE HAS ELECTED TO ALIGN ITS LOCAL SCHOOL DIVISIONS

In Virginia, North Carolina and Alabama, states with a history of state-mandated systems of segregated public schools, there is no uniformity in the interrelationship between school division and political subdivision lines. In Charlotte, North Carolina, and Mobile, Alabama, each respective school division includes the urban core city along with the surrounding suburban county. The cities themselves are but a part of a larger political subdivision which encompasses the entire metropolitan area involved. On the other hand, Virginia is unique in that Richmond and, indeed, all of its cities are separate political subdivisions which under State law have the right to operate separate school systems.[37]

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in percentages in that the system was then 70 per cent black. *Calhoun, supra*, 332 F.Supp. at 805. The United States Court of Appeals for the Fifth Circuit has specifically directed that the District Court make supplemental findings of fact and conclusions of law with regard to suggestions made by the latter concerning the desirability of a metropolitan area solution to the increasing segregation within the Atlanta system. *Calhoun* v. *Cook*, 451 F.2d 583 (5th Cir. 1971).

On August 24, 1972, the United States Court of Appeals for the Sixth Circuit conducted hearings on the relief decreed for the Detroit metropolitan area, and the matter is currently under advisement.

[37] Va. Code Ann., § 22-93 (Repl. Vol. 1969), cited in *Council of City of Emporia, supra*, 92 S.Ct. at 2199. In other *de jure* states, school district lines are not necessarily coterminous with political subdivision boundaries. *See, e.g., Haney, supra; United States* v. *Texas, supra.*

In all three cities mentioned, the overwhelming percentage of black citizens live within the city limits ringed by substantially all-white suburban areas.

In upholding the District Court in Charlotte, this Court approved a desegregation plan projecting a racial composition under which substantially all schools in the Charlotte-Mecklenburg metropolitan area would range from 9 to 38 per cent black. *Swann, supra.* In *Davis*, this Court rejected attempts by Mobile school authorities to rely upon a natural geographical barrier as a basis for effectively confining the majority of black students in that metropolitan area to substantially all-black schools in the core city. In both Charlotte and Mobile, the racial composition of schools now bears a reasonable relationship to the racial composition of the entire metropolitan school population.

In the Richmond metropolitan community, however, 85 per cent of all black students attend schools within the City system ringed as it is by the two County systems each of which is at least 90 per cent white.

The District Court found that, viewed in its metropolitan setting, the Richmond school system was clearly identifiable as black and those of Henrico and Chesterfield as white, (201a) and that additional white attrition from the Richmond system facilitated by the close proximity of the substantially all-white County systems could reasonably be anticipated. (209a-210a)

Though conceding that the evidence indicated the workability of the racial compositions envisioned in the City School Board's metropolitan desegregation plan, the Court of Appeals nevertheless held that in its concern for effective relief, the District Court had exceeded its powers in ordering the implementation of the plan in the absence of a specific finding of invidious racial motive or intent in the

establishment or maintenance of the existing school division lines. Absent such findings, the Court of Appeals held in effect that the Tenth Amendment permitted Virginia to adhere to its particular scheme of school division alignment even though a more effective plan for the elimination of all the vestiges of the dual system of schools in the Richmond metropolitan area was thereby precluded.

The record establishes that in a few short years Richmond will have a substantially all-black school system surrounded by two substantially all-white systems—in sharp contrast to the more effective plans of desegregation under which schools in the Charlotte and Mobile metropolitan communities are currently operating.

In having sanctioned the maintenance of virtually all-black and all-white school systems in the Richmond metropolitan community with its history of *de jure* segregation in public education, the Court of Appeals has implicitly approved of a different standard of equality based on the manner in which this State has chosen to align its school divisions. Because school boundary lines must confrom to the three political subdivisions in the Richmond metropolitan area, patterns of school segregation, racially identifiable schools and inherent educational inequalities prohibited by this Court in the Charlotte and Mobile metropolitan areas are allowed to persist in this community.

Thus, the marked polarization of black and white children attending schools in the Richmond metropolitan area will serve as the antithesis of the effective integration which, owing to the implementation of school desegregation plans approved by this Court, enjoys current vitality in similar metropolitan areas. This bizarre result stems from a sanctity accorded to existing state-created lines not permitted in cases where other Fourteenth and Fifteenth Amendment

rights have been involved,[38] and provides more than a sufficient basis for this Court's review of the decision below.

Under the decision of the Court of Appeals, we are left with the undeniable fact that the measure of relief from school segregation afforded students in the Richmond metropolitan area pales in comparison to that currently enjoyed in both the Charlotte and Mobile metropolitan communities. Furthermore, there is a noticeable absence of any sound constitutional basis commending such a result. It flows only from the crippling limitation placed upon the remedial powers of the District Court through the application of an overly restrictive standard adopted by the Court of Appeals. Though the State is the relevant unit of equality under the Fourteenth Amendment, the degree of effectiveness of relief within a particular geographical area of a state should rest on the feasibility of viable alternatives available and not on the happenstance of variances in school division alignment. Since the state-mandated system of dual schools was the evil struck down in *Brown I*, it would indeed be ironical if one of the recalcitrant states could in fact effectively segregate thousands of its black school children owing to a fortuitous alignment of school divisions regardless of the existence of feasible and viable alternatives.

The development of more definitive guidelines as to the circumstances under which school district lines may be crossed, revised or altered to insure effective relief from the remaining vestiges of a dual school system thus is urgently

[38] This Court has steadfastly refused to allow political subdivision any other state-created lines to control the effective exercise of ndamental constitutional rights unrelated to school desegregation. g., *Reynolds* v. *Sims*, 377 U.S. 533 (1964) (legislative district es); *Wesberry* v. *Sanders*, 376 U.S. 1 (1964) (congressional dist lines); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960) (political bdivision lines).

needed so as to preclude the divergent results possible when, as under the effect of the Court of Appeals' decision, relief may be made dependent upon the manner in which a state has elected to align its local school divisions.

B.

UNDER WHAT CIRCUMSTANCES THE REMEDIAL POWER OF A DISTRICT COURT MAY BE LIMITED BY EXISTING SCHOOL DIVISION LINES

The Court of Appeals established the standard that, regardless of the relative effectiveness of alternative desegregation plans presented, the remedial power of a district court cannot extend beyond existing school division lines absent a showing of a racially discriminatory purpose in the establishment or maintenance of said lines or of evidence establishing joint interaction by any two of the three school divisions involved for the purpose of keeping one school system relatively white by confining blacks to another, and that in the absence of such invidious intent, there was no constitutional violation and no power to act on the part of a lower court.

CIRCUMSTANCES RELIED UPON BY THE DISTRICT COURT

The standard applied by the District Court was predicated on the remedial guidelines established by this Court in *Brown II*, *Green*, *Swann* and *Davis*, requiring the elimination of all vestiges of a system of dual schools by the most effective alternative or plan available under the facts and circumstances of the particular case. In the judgment of the District Court, these mandates required an overview of the totality of a myriad of factors. The following are the most significant circumstances leading the District Court to conclude that its remedial power was not restricted by the existing school division lines:

1.

Interdependence Between Richmond, Henrico And Chesterfield And The Inevitable Effects Thereof On Community And Student Perceptions

The evidence established, in the judgment of the District Court, the conclusion reached by all independent consultants who had studied the three political subdivisions involved, i.e., the existence of a strong economic, cultural and social interdependence and community of interest between the City of Richmond and the Counties of Henrico and Chesterfield, the lack of any distinctive geographical boundary lines dividing the three jurisdictions, and, indeed, the artificial and transitional nature of the lines which do exist. The factors substantiating such conclusions have been summarized in the Statement, *supra*, at pp. 13-14.

Expert testimony from Southern educators as well as the District Court's own intimate knowledge of local conditions led it to conclude that even though students attending schools in the Richmond metropolitan community would prepare for citizenship and pursue their vocational, cultural and social goals in a community with a historically stable racial composition of approximately two-thirds white and one-third black, that, absent assignments across the existing school division lines, these school children would be attending identifiable black schools in the City and white schools in the two surrounding counties. (436a, 469a-474a)

Based upon the testimony of these educators in applying to the situation in the Richmond metropolitan area this Court's previous findings in *Brown I, supra*, 347 U.S. at 493-95, regarding the adverse effects on the perception and motivations of students caused by segregation, the lower Court concluded: (1) that the development of attitudes and values as a purpose of public education was equally as im-

portant as and inextricably interwoven with the other acknowledged purpose of education, i.e., the teaching of academic skills; (2) that in a biracial community such as the Richmond area, meaningful integration was an essential element of quality education and equal educational opportunity; and (3) that meaningful integration, to the extent feasible, was as vitally important for white students as for blacks. (261a, 469a-478a) The District Court accepted the detailed reasons given by these experts as to why the invidious effects of segregation on the perception and motivation of students cannot be eradicated in the Richmond metropolitan community unless pupils are assigned across the existing school division lines. (477a-478a)

2.

Proof Establishing Lack Of Sanctity Or Compelling Interest In The Maintenance Of Existing School Division Lines

The District Court's finding that there was no overriding State interest in maintaining the existing school division lines as inviolate was rooted in proof of the history of previous treatment of these boundaries on the part of the State and local school authorities.

Supporting the District Judge's conclusion that there was no compelling interest in the maintenance of the existing school division lines as assignment barriers was a plethora of evidence showing the State's complete disregard of both political subdivision and school division lines with respect to the assignment of pupils in establishing, maintaining and perpetuating segregation for many years after *Brown I*. (193a-195a, 352a-356a, 360a-364a) Existing school division and political boundaries served as no impediment to the creation of regional schools for blacks con-

sisting of as many as five separate political subdivisions and comprising areas as large as 1,700 square miles, one of which was operated as late as 1968. (352a, 356a) With State encouragement, all the defendant school authorities participated in the assignment of pupils across political and school boundary lines throughout the period of tuition grants and pupil scholarships, and such lines were similarly disregarded when, to perpetuate segregation, blacks were transported to other divisions, and, indeed, across State boundaries as well to all-black schools. (330-331a, 360a-364a)

The District Court found that neither assignments across existing school division lines nor consolidation, though encouraged for many valid and invalid purposes in the past, had ever been utilized or considered as tools to facilitate the disestablishment of the statewide system of dual schools. (218a-219a, 278a, 281a-283a)

As early as 1944, the State Board of Education had looked with favor on a long-range plan having as its objective approximately a 50 per cent reduction in the total number of school divisions which would have necessarily involved the combination of then existing separate political subdivisions into single school divisions. (271a)

The District Court further predicated its conclusions as to the lack of any compelling interest in maintaining existing school division lines on the existence of a State statute which for many years had given unfettered discretion to the State Board of Education to divide the State into school divisions consisting of more than one political subdivision,[39] other sections of State law enacted in 1954 de-

[39] Va. Code Ann., § 22-30 (Repl. Vol. 1969). (607a) During the pendency of the proceedings below, however, a new statute became operative which divested the State Board of the power to act alone in so dividing the State's school divisions. Va. Code Ann., § 22-30, as amended (Cum. Supp. 1971). (617a)

tailing the method of operation of school divisions consisting of more than one political subdivision,[40] and another provision which expressly authorized the operation of joint schools by separate political subdivisions in accordance with rules and regulations to be promulgated by the State Board of Education."[41] (355a)

The lower Court's conclusion that existing lines were not inviolate was further supported by an abundance of expert testimony that as applied to the Richmond metropolitan area, the existing school division lines served no educational purpose, rendered effective desegregation impossible, and that the continued maintenance thereof would result in the denial of equal educational opportunity in the Richmond metropolitan area. (231a, 258a, 469a-478a)

3.

The Further Entrenchment Of The Dual School System And The Containment Of Blacks Since Brown I

It was not until 1970, sixteen years after *Brown I*, that the first significant effort was made to disestablish the state-mandated dual school system in Richmond, Virginia. This period saw the further entrenchment of the dual school systems in each of the three political subdivisions with the long range debilitating effects attendant thereto resulting in large measure from the overt defiance to the mandates of *Brown I and II*, the continuing discrimination at the federal, state and local levels in housing, and the concentration

[40] Va. Code Ann., §§ 22-100.1, -100.12 (Repl. Vol. 1969). (608a-613a) Slight amendments to these provisions pursuant to the July 1, 1971 constitutional revision failed to alter the substance of the 1954 statutes. See Va. Code Ann., §§ 22-100.1, -100.3 through -100.11 (Cum. Supp. 1971). (618a-621a)

[41] Va. Code Ann., § 22-7 (Repl. Vol. 1969). (607a)

ithin the City of all public and rent subsidized housing
cupied overwhelmingly by blacks.

As the District Court found, the effect of the refusal of
e Counties to authorize and permit such housing within
eir boundaries, and their blatant discrimination in public
nployment, had the foreseeable consequence of deterring
e movement of blacks to the Counties. (195a-211a)
hool site selection and construction through the 1970-71
hool year corresponded to and was superimposed upon
e segregated residential housing patterns within the three
calities as a result of the school authorities' continued
herence to neighborhood zoning irrespective of its effects
the process of desegregation. (203a-211a)

4.

ccentuation Of The Gross Racial Disparities Since 1954 Attributable In Part To State And Local Discrimination Through 1971

During the sixteen-year period from 1954 to 1970, char-
terized by the continuous utilization of practices designed
frustrate the process of school desegregation, the student
cial composition of the City system changed from 56
r cent white to 66 per cent black notwithstanding the 1970
nexation which produced an influx of more than 8,000
idents, 97 per cent of whom were white. Over the same
riod of time, the student racial compositions of the rapidly
owing contiguous suburban communities of Chesterfield
d Henrico had changed from 20 and 10 per cent black
spectively to 9 and 8 per cent black. The number of black
idents in the City had increased from 15,000 to 30,000
th the result that 85 per cent of the blacks in the Rich-
nd metropolitan area attended schools in the City. The
mbined racial composition within the three school divi-
ns, however, had varied less than one-tenth of one per
t in the preceding decade.

The District Court found that discriminatory practices and policies had facilitated the further entrenchment of the dual school systems, had contributed in part to the acceleration of the racial disparities between the City and County systems, and had rendered the process of disestablishment more difficult. (212a-222a)

5.

Failure Of The Three School Divisions Involved To Establish Unitary Systems By June, 1971

The open hostility of the County school authorities to any integration and the continued operation by all three school systems of black and white schools clearly identifiable as such by reference to student population and/or faculty membership through the school year 1970-71 has been summarized previously in the Statement, *supra*, at pp. 25-29. Thus, at the time of the hearings below all three systems were in the process of converting to unitary operations—required as a result of the persisting denial of equal educational opportunity and, like other recent cases presented to this Court,[42] a condition justifying the continued exercise of remedial power.

6.

White Attrition In City Schools And The Foreseeable Effects Thereof

The first significant attempt to desegregate Richmond schools occurred in the 1970-71 school year with the implementation of the "Interim Plan" which was accompanied by an exodus of more than 3,000 or 15 per cent of the total

[42] *E.g., Council of City of Emporia, supra; United States* v. *Scotland Neck City Bd. of Educ.*, ... U.S. ....., 92 S.Ct. 2214 (1971); *Swann, supra.*

white student population. This loss represented a 300 per cent increase in white attrition over previous years. Twelve months later the desegregation plan modeled upon the principles enunciated in *Swann* produced another exodus of more than 3,000 white students. Thus, Richmond sustained a loss of more than a third of its white students within a 12-month period involving two school openings.

The District Judge concluded that this massive withdrawal from the City system foreshadowed an all-black system within the foreseeable future and that the process of increasing polarization was immeasurably facilitated by the existence of the two virtually all-white school systems surrounding the City. (207a-210a) Judge Merhige thus concluded that effective relief could not be afforded within the limits of the City of Richmond and that the assignment of pupils across the existing school division lines was essential to the effective disestablishment of the state-mandated and perpetuated dual school system. (201a) These conclusions were amply supported by testimony predicting the utter frustration of the promises of *Brown I* and the certainty that black students for the foreseeable future could only look forward to attending substantially all-black center-City schools ringed by virtually all-white suburban schools. (469a-478a)

7.

The Presentation Of A Desegregation Plan Promising Realistically To Eliminate All Vestiges Of The Dual School System

Both the Richmond School Board's motion to compel joinder of parties needed for just adjudication and the plaintiffs' amended complaint envisioned a metropolitan desegregation plan wherein assignments of pupils would not be restricted by the existing school divisions lines. The plain-

tiffs sought relief by either the merger of the Richmond, Henrico and Chesterfield school divisions or through the development of a court-approved plan for the exchange of pupils between the three separate divisions.

The State and County defendants failed to offer any proposed modifications or alterations to the plan submitted by the City School Board nor did they submit any other plans despite adequate time and invitations to do so from the District Court and the Richmond Board as well. The District Court's order of January 10, 1972, which gave rise to this petition provided the State and County defendants with an abiding opportunity to seek modifications and alterations of the approved plan. (541a)

Significant features of the metropolitan desegregation plan have been detailed previously in the Statement, *supra*, at pp. *32-37*. The lower Court found the plan to be educationally sound and its implementation reasonable, feasible and workable. (428a, 432a) The District Judge, based on evidence presented, concluded that the metropolitan plan offered vastly superior prospects for effective relief in that it would insure (1) the elimination of the extreme racial disparities between the City and County systems; (2) the abolition of the County systems as white havens facilitating the further resegregation of Richmond schools; and (3) the eradication of all vestiges of the dual system of schools through the removal of the racial identifiability of all facilities in the Richmond metropolitan area. (239a-240a, 418a-435a)

The totality of the diverse circumstances noted above which in the judgment of the District Court required remedial action provides a stark contrast to the severely restrictive basis for relief as established by the Court of Appeals. School authorities and federal courts wrestling with the intricacies of relief from *de jure* segregation on

ıetropolitan area-wide basis urgently need guidance from s Court as to whether findings such as those noted above ›vide a sound basis for the approval by a district court of lan envisioning the assignment of students across exist- school district lines. Accordingly, the Richmond School ard respectfully suggests that the national importance the issues presented along with the inevitable conse- ences of the overly narrow limitation placed upon the ıedial powers of the District Court by the Court of peals compel a full review by this Court.

C.

ıether, In The Formulation Of Effective Relief, District Courts Are Permitted To Utilize Means Coextensive With Those Used To Establish And Perpetuate A Statewide System Of Dual Schools

A major portion of the proceedings below consisted of extensive development by largely uncontradicted evi- ıce of the role of the State and local school authorities he establishment and perpetuation for more than a decade ond *Brown I* of a dual system of schools, and of their uctant and incomplete efforts in eradicating the vestiges reof up to the time of the hearings below. All of the de- es and means, both ingenious and ingenuous, utilized in n, yet harmful attempts to defy, circumvent and delay realization of the promises of *Brown I and II* were ailed in full. Accordingly, this evidence and its own ısiderable experience in school desegregation cases in rginia compelled the District Court to reject the pleas the State and County defendants as to the allegedly his- ical tradition of local autonomy, their opposition to as-

signments across existing school boundaries, and to the consolidation of the three school divisions.[43]

During this all too recent period, the State, not only without objection but with the encouragement of the Counties, assumed all control over the assignment of pupils and, in some instances, the complete operation of local public schools—which attributes are now alleged to be the hallmarks of the so-called historical tradition of local autonomy in the operation of Virginia's public schools. (575a-576a) For decades the State encouraged consolidation of separate school divisions and the operation of the joint schools for all educational objectives, save desegregation. Years ago the General Assembly of Virginia established a detailed framework for the operation of school divisions consisting of more than one political subdivision, though obviously with no view of utilizing this procedure as a tool in the dismantling of dual school systems.

The State with the concurrence of local school authorities employed principles of consolidation in establishing regional schools for blacks which operated as late as 1968, and many local school boards including the defendants herein for many years engaged in the joint operation of special educational facilities which of necessity required the daily crossing of the existing school division lines; however, neither the State nor the local school authorities herein have ever recommended that these techniques be employed for the purpose of dismantling the system of dual schools. Rather, the assignment of students across existing school division, political subdivision, and, indeed, State lines was encouraged, financed and required of thousands of pupils

[43] The District Court made specific findings regarding the racial hostility which underlay the opposition to the use of such obvious techniques on the part of the State and County officials. (212a, 230a-231a)

by the State and local authorities for the sole purpose of perpetuating segregation.

The desegregation plan presented by the Richmond School Board and approved by the District Court involved the assignment of pupils across existing school division lines and the utilization of the legislatively conceived plan for the operation of a consolidated school division—the same tools and principles utilized by the same school authorities in establishing a system of segregated schools and in maintaining and perpetuating it for years after *Brown I.*

It is apparent that the District Court deemed such long-standing utilization of these devices and principles for both valid and invalid purposes as affording a rational basis for requiring the defendant State and local authorities to exercise the powers which they now have under State law in providing for the complete and effective desegregation of all schools in the Richmond metropolitan community.

In view of its silence in this area, it can only be inferred that in the opinion of the Court of Appeals such past conduct was irrelevant in determining the scope of the remedial powers of the lower Court.

This Court as early as 1955 in *Brown II, supra,* 349 U.S. at 299-301, recognized the extreme complexity of the problems involved in the dismantling of state-mandated dual school systems, and that imaginative and, indeed at times, drastic measures might well be required.

The record establishes, however, that the State of Virginia has taken no affirmative voluntary actions, much less drastic ones, to dismantle its dual system of schools. (212a-222a, 332a-352a) In light of this State's abdication of its affirmative duty to take whatever steps might be necessary to eradicate all vestiges of its dual system of schools, it is certainly reasonable to require the District Court in molding its desegregation decree to meet the ex-

igencies of the case to utilize means and methods at least co-extensive with those which have been employed by the State and local officials in the active and continuous perpetuation of illegal discrimination in public education.

The limitations on the remedial power of the District Court as imposed by the Court of Appeals in this case, however, produced the incongruous result that the powers of the lower Court to insure the removal of all vestiges of a state-mandated dual school system are not to be as extensive as the means utilized by the State to deny equal educational opportunity, and that the existence of school division lines which have never served as barriers or impediments to the retention and promotion of segregation in the past, now precludes effective relief in the Richmond community.[44]

The Richmond School Board submits that this Court should resolve whether proof of state support and encouragement of student assignments across political subdivision lines for valid educational purposes as well as for the perpetuation of illegal segregation may be a sound basis for the judicial approval of such techniques as a means of eliminating all vestiges of a system of state-mandated segregation.

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[44] The United States Court of Appeals for the Fifth Circuit has recognized that "[b]arriers which did not prevent enforced segregation in the past" will not be allowed to impede the process of desegregation. *Henry* v. *Clarksdale Mun. Separate School Dist.*, 433 F.2d 387, 394 (5th Cir. 1970).

CONCLUSION

For the foregoing reasons, the School Board of the City f Richmond and the individual members thereof respect-ılly submit that the Petition for Certiorari should be ranted to review the judgment of the United States Court f Appeals for the Fourth Circuit.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

OCT 5 1972
MICHAEL RODAK, JR., CLERK

No. 72-550

CAROLYN BRADLEY, *et al.*,

Petitioners,

vs.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-.....

CAROLYN BRADLEY, *et al.*,

Petitioners,

vs.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment and decision of the United States Court of Appeals for the Fourth Circuit, entered in the above-captioned matter on June 5, 1972.

Opinions Below

The opinions of the Court of Appeals for the Fourth Circuit are reported at 462 F.2d 1058* and are reprinted at pp. 557-602 of the Appendix to the Petition for Writ of Certiorari seeking review of this judgment filed in this Court by the School Board of the City of Richmond, Virginia, et al., as petitioners.[1] The opinion of the United States District

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* Parallel citations are given within this Petition only for the district court opinion, however, since the advance sheet containing the Court of Appeals' opinion was received on the day of printing.

[1] Citations throughout this Petition in the form "A.—" refer to the separate appendix of opinions below and relevant state statutes filed by the Richmond School Board in connection with its petition. The transcript of the August-September, 1971 hearings on the

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Court for the Eastern District of Virginia of January 5, 1972, and its implementing order of January 10, 1972, which was reversed by the Court of Appeals, are reported at 338 F. Supp. 67 and are reprinted in the same Appendix at pp. 164-545.

Other opinions and orders of the Courts below related to this litigation are reported or reprinted as follows:

1. District court opinion and order entered August 17, 1970, approving interim plan of desegregation for Richmond, reported at 317 F. Supp. 555 and reprinted at A. 1-47.

2. District court opinion and order entered December 5, 1970, granting motion for joinder of additional parties defendant and directing the filing of an amended complaint, reported at 51 F.R.D. 139 and reprinted at A. 48-57.

3. District court opinion of January 8, 1971 denying motion to recuse, reported at 324 F. Supp. 439 and reprinted at A. 58-90.

4. Unreported district court order of January 8, 1971, as entered *nunc pro tunc* January 13, 1971, on pre-trial motions, reprinted at A. 91-93.

5. Unreported district court order of January 13, 1971 on additional pre-trial motions, reprinted at A. 94-97.

6. District court opinion and order entered February 10, 1971, declining to convene three-judge court, reported at 324 F. Supp. 396 and reprinted at A. 98-106.

7. District court opinion and order entered February 10, 1971 denying motion to dismiss as to certain defendants in

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issues raised by joinder of the state and county defendants will be cited by individual volume letter designation, *e.g.*, "Tr. A-10." Transcripts of earlier hearings are consecutively paginated and will be cited by date, *e.g.*, "Tr. 8/8/70 102." Exhibit references are to the August-September, 1971 hearings only.

their individual capacities, reported at 324 F. Supp. 401 and reprinted at A. 107-09.

8. District court opinion and order entered April 5, 1971 approving further desegregation plan for Richmond schools, reported at 325 F. Supp. 828 and reprinted at A. 110-55.

9. Unreported district court opinion and order entered July 20, 1971 denying renewed motion to convene three-judge court, reprinted at A. 156-62.

10. Unreported district court order entered September 15, 1971 denying evidentiary motion, reprinted at A. 163.

11. Unreported district court opinion and order issued January 19, 1972 denying stay of January 10 order, reprinted at A. 546-52.

12. Court of Appeals order granting partial stay of district court decree, entered February 8, 1972, reported at 456 F.2d 6 and reprinted at A. 553-56.

13. Amended judgment of the Court of Appeals, entered August 14, 1972, reprinted at A. 603.

Other reported opinions in this case are as follows: 317 F.2d 429 (4th Cir. 1963); 345 F.2d 310 (4th Cir.), *rev'd* 382 U.S. 103 (1965); 324 F. Supp. 456 (E.D. Va. 1971).

Jurisdiction

The opinion of the Court of Appeals was entered June 5, 1972 and its amended judgment filed August 14, 1972. On August 29, 1972, Mr. Justice Marshall extended the time within which this Petition might be filed to and including October 5, 1972. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

Question Presented

Is the constitutional power of a federal court to remedy racial discrimination in the public schools confined within the geographic boundary lines of a single State-created school district in the absence of a showing of racial motivation in the drawing of the district lines?

Constitutional and Statutory Provisions Involved

The case involves the Tenth Amendment to the Constitution of the United States, which reads as follows:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

This matter also involves the application of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

Various provision of Virginia's 1902 and 1971 Constitutions and statutes relating to education which are also relevant to this matter are set out in the separate Appendix filed by the School Board of the City of Richmond (see n. 1 *supra* and accompanying text) at A. 604-23: Constitution of 1902, §§ 129, 130, 132, 133; Constitution of 1971, Art. VIII, §§ 1-7; Va. Code Anno. §§ 22-1, -2, -7, -30, -34, -100.1 through -100.12 (Repl. 1969); Va. Code Anno. §§ 22-1.1, -2, -7, -21.2, -30, -32, -100.1, -100.3 through -100.11, -126.1, -127 (Supp. 1972).

Statement

A. *Background of the Litigation: School Segregation and Desegregation in Virginia.*

In *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 5-6 (1971), describing the cases before it from North Carolina, Georgia and Alabama, Mr. Chief Justice Burger wrote for the Court that "[t]his case and those argued with it arose in states having a long history of maintaining two sets of schools in a single system deliberately operated to carry out a governmental policy to separate pupils in schools solely on the basis of race . . . " This matter, too, arises in a State which has, historically and continuously, spared no resource and left unexplored no ingenious device in its effort to maintain segregation in education.[2] This history is important not only because, as in *Swann*, it points to the continuity of judicial effort since *Brown* v. *Board of Education*, 347 U.S. 483 (1954) to devise and implement adequate remedial steps to redress the unconstitutional state policy, but also because the Court below—under the rubric of the Tenth Amendment—attributed to the Commonwealth of Virginia a policy of individual school district sanctity (to which the Court of Appeals said the federal remedial power must defer) that examination of this history makes apparent does not exist and never has existed.

Virginia's public schools were, at the outset, entirely local in character and operation. The earliest education statute of the Commonwealth (1797) merely authorized county officials to construct and operate schools with reven-

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[2] This Court has decided as many cases involving public school desegregation arising in Virginia as in any other state. A Virginia case was one of those decided with *Brown*; *and see Griffin* v. *County School Bd.*, 377 U.S. 218 (1964); *Bradley* v. *School Bd.*, 382 U.S. 103 (1965); *Green* v. *County School Bd.*, 391 U.S. 430 (1968); *Wright* v. *Council of the City of Emporia*, 33 L.ed.2d 51 (1972).

ues from county taxes. Not until 1869 did the Virginia Constitution and laws create "school districts" and require the establishment of a State-wide public school system. See *Board of Supervisors* v. *County School Bd.*, 182 Va. 266, 268-69, 275, 28 S.E.2d 698, 699, 702 (1944). At the same time, however, a policy of segregation in the public schools was adopted and enforced on a State-wide basis.[3] The actions of Virginia officials, including state educational authorities, make manifest the hierarchy of values when the two policies—localism and segregation—were in conflict. For example, the State Board of Education[4] did not avail itself of its authority to consolidate[5] separate school dis-

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[3] In 1954, the Virginia Attorney General told this Court that: In general, education in Virginia has operated in the past pursuant to a single plan centrally controlled with regard to the segregation of the races. (Brief for Appellees in No. 3, *Davis* v. *County School Bd.*, O.T. 1954, at p. 15.)

[4] The State Board of Education has the responsibility for the general supervision of education throughout the Commonwealth. Among its specific powers, it prescribes the qualifications for division superintendents, who are to be appointed by the local school boards from a list of eligible persons certified by the State Board, and who receive a salary not less than a minimum established by State law and toward which the State contributes a fixed proportion. If a local board fails to appoint its Superintendent within a specified time after a vacancy occurs, the State Board designates that officer; the current Chesterfield Superintendent was so appointed by State authorities. The State Board also prescribes rules and regulations governing the operation of high schools, examines and certifies teachers and selects textbooks. The ultimate central authority for public education in Virginia has received judicial recognition; in 1962 a federal district court held the public schools within Prince Edward County were "primarily administered on a statewide basis. A large percentage of the school operating funds is received from the state. The curriculums, school textbooks, minimum teachers' salaries, and many other school procedures are governed by state law . . . ." *Allen* v. *County School Bd.*, 207 F. Supp. 349, 354 (E.D. Va. 1962). See also, *Griffin* v. *County School Bd.*, *supra*.

[5] This power was removed from the State Board of Education by the 1971 General Assembly of Virginia, in the course of this lawsuit. See pp. 32-33 *infra*, text at note 53.

tricts into single school divisions (which would at least share the same Superintendent and might then merge their operations[6] under a single school board) despite avowed State policy favoring consolidation;[7] almost without exception, the State Board joined only consenting districts at their request. On the other hand, state authorities actively endorsed and facilitated the establishment and operation of joint schools for blacks which drew their students from within several separate school districts and over distances which sometimes required the black children to board at the school during the week.[8] With the express sanction of

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[6] The expectation of joint operation which flowed from being named a single school division is well illustrated by the history of *Wright* v. *Council of the City of Emporia*, 33 L.ed.2d 51, 57, 59 (1972). There, after Emporia became a second-class city, politically independent of Greensville County, the city and county were designated a single school division by the State Board of Education and continued to operate their schools together until after entry of an effective desegregation order. In 1969, when the city attempted to operate its own school system, it also sought separate school division status from the State Board even though this was not required under State law.

[7] In 1922 the General Assembly abolished the prior system of separate school districts congruent with magisterial (county subunit) districts following the recommendation of the State Superintendent of Public Instruction that this be done in order to eliminate "[p]urely artificial differences" among the various districts. *Annual Report of the State Superintendent*, 1917-18, p. 14. (PX 124) The State Board of Education has consistently supported consolidation into larger operating units. In 1969, the Board said:

> The State Board, therefore, has favored in principle the consolidation of school divisions with the view to creating administrative units appropriate to modern educational needs. The Board regrets the trend to the contrary, pursuant to which some counties and newly formed cities have sought separate divisional status based on political boundary lines which do not necessarily conform to educational needs. (RSBX 82)

[8] For example, $75,000 in state vocational funds was allocated to assist in the establishment of the Carver High School for black students from Culpeper, Madison, Orange, Green and Rappahannock Counties—a multi-county "school district" of over 1338 square

state authorities, county school systems before and after *Brown* sent their black resident pupils to other school districts (including one in West Virginia) and paid tuition for them.[9] Indeed, the State Superintendent of Public Instruction advised local districts ten days after the *Brown* decision to continue their existing method of operation in each locality, apparently without regard to the decisions.

Immediately after the decision in *Brown* v. *Board of Educ.*, 349 U.S. 294 (1955), the General Assembly of Virginia restructured control of education in the Commonwealth, subjecting all phases of school operation to centralized control and direction in an effort to maintain pupil

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miles. Detailed regulations for the operation of such facilities were adopted by the State Board of Education in 1946. The State Department of Education assisted in developing transportation systems for these schools and otherwise facilitated their segregated functioning. In the district court's detailed findings of fact (A. 352-56; 338 F. Supp., at 155-57), evidence concerning half a dozen such "joint schools" is summarized: Pulaski-Radford-Montgomery, Christiansburg Institute, Manassas (Prince William, Fairfax, Fauquier), Charlottesville-Albemarle, Lancaster-Northumberland, and Rockbridge-Lexington. Some of these schools did not close as segregated institutions until 1966, 1967 and 1968, respectively.

[9] Voluminous data concerning the shuffling of black students from one school system to another is summarized in the district court's detailed findings of fact (at A. 360-64; 338 F. Supp., at 159-61). Some examples follow:

> Federick County black students attended high school in the separate Winchester city system.
>
> Until 1964-65, black Dixon County students attended high school in Russell County.
>
> From 1955 until 1965 black pupils of Bland County were educated in Tazewell County schools.
>
> From 1945 to 1965 Bath County blacks attended Alleghany County schools.

Between 1941 and 1971, Chesterfield County sent 6,806 pupils to Richmond or Petersburg schools, in addition to any transfers under the tuition grant programs; between 1960 and 1971, a total of 14,522 Richmond students similarly attended other public systems (mostly as a result of annexations).

segregation. (See Virginia's interposition resolution, Va. Acts 1956, S.J.R. 3, p. 1213, 1 Race Rel. L. Rep. 445). In 1956 the Governor was authorized to close any school which was integrated, Va. Acts 1956, Ex. Sess., ch. 68, p. 69, 1 Race Rel. L. Rep. 1103.[10] At the same time, the State Pupil Placement Board was established as an independent state body with plenary power over the assignment of all schoolchildren in the Commonwealth;[11] it continued in existence until 1968.[12] The State Department of Education disseminated information concerning Pupil Placement Board procedures to local school officials, and its employees also served the Board. These and other devices effectively prevented any local school districts from voluntarily undertaking desegregation in accordance with *Brown*, and restricted the elimination of segregation to those school districts involved in federal court litigation where compliance

[10] In 1958 the Governor ordered the State Police to close six schools in Norfolk to prevent the admission of 17 black students. The statutes were declared to be in conflict with the Virginia Constitution in *Harrison* v. *Day*, 200 Va. 439, 106 S.E.2d 636 (1959). (Thereupon, local boards were authorized to close schools to which any federal or state troops, military or civil, were sent. Va. Code Ann. §22-188.51 (Repl. 1969)). A reading of *Harrison* v. *Day* together with *School Bd. of Prince Edward County* v. *Griffin*, 204 Va. 650, 133 S.E.2d 565 (1963) makes clear that the defect under the state constitution was not the exercise of State power to keep local schools segregated, but only the State's assumption of an ultimate power to discontinue local schooling entirely. *Compare James* v. *Almond*, 170 F. Supp. 331 (E.D. Va.), *appeal dismissed*, 359 U.S. 1006 (1959).

[11] A December 29, 1956 telegram from the Pupil Placement Board to then Chesterfield County Superintendent of Schools Fred D. Thompson began: "Under the provisions of Chapter 70, Acts of Assembly, extra session of 1956, effective December 29, 1956, the power of enrollment or placement of pupils in all public schools of Virginia is vested in the Pupil Placement Board. *The local school board, Division Superintendents, are divested of all such powers*" (emphasis supplied) (Tr. F-105-06; PX 122).

[12] Evidence introduced at the trial of this case indicated the recognition of State authorities that the Pupil Placement Board was merely a device to prevent school integration (PX 144-F).

with state procedures had been enjoined or declared unconstitutional. See, *e.g.*, *Adkins* v. *School Bd. of Newport News*, 148 F. Supp. 430 (E.D. Va.), *aff'd* 246 F.2d 325 (4th Cir.), *cert. denied*, 355 U.S. 855 (1957).

When the devices of extreme centralization represented by the school closing and pupil assignment laws failed to prevent desegregation, Virginia accepted the inevitablilty of some integrated education but did all within its means to minimize the amount. A combination of centralist and localist policies was designed, fluctuating from time to time in whatever manner seemed to promise the most successful avoidance of *Brown*. Thus, although pupil assignment powers were returned in 1961 to local boards, criteria essentially identical to those of the Pupil Placement Board (which dealt explicitly with race) were promulgated by the State Board of Education. At the same time, the resources of the State were made available to school districts for the purpose of perpetuating segregation: they received assistance in designing transportation systems to serve segregated schools,[13] legal aid in resisting desegregation litigation, and loans and grants of State funds to construct and operate additional segregated schools either within existing districts or as joint facilities for black students in several districts. State officials continued to urge defiance of this Court's mandates and set the pattern by their own activities, as when the Department of Education continued segregated meetings of state-wide educational personnel until 1965.[14]

At the local level, the new tolerance allowed local school boards—coming only two years after the State had closed

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[13] In 1963, the State Department of Education drew segregated bus routes—some as long as 20 miles each way—at the request of Henrico officials.

[14] A. 265; 338 F. Supp. at 116; PX 122; RSBX 83.

the schools rather than allow them to open on an integrated basis—was demonstrated in Prince Edward County. When Prince Edward elected to end its public school system rather than desegregate, Virginia's constitution was interpreted by the State courts to allow such closure notwithstanding a constitutional provision requiring the establishment of a system of free public schools. See *County School Bd. v. Griffin, supra; Griffin* v. *County School Bd., supra.*

State authorities continued to function in support of segregation, however. In Prince Edward, they softened the blow by distributing tuition grants, at least to white students, thereby enabling pupils to attend either private schools or public schools in other divisions untainted by desegregation. The tuition grant law that made this possible was originally adopted by the 1956 legislature which passed the school closing laws; in 1958 the State Board of Education issued regulations to implement the statute which provided reimbursement for tuition paid in order to attend another school division if the pupil were assigned to an integrated school or one which had been closed by order of the Governor. The State Department of Education reimbursed localities for the State's share of the grant.[15] The program was expanded in 1960 (when the statute was amended) to include payments to private schools.

The tuition grant system represents an admixture of central state support and decentralized decision-making

[15] Until its termination in 1970, see *Griffin* v. *State Bd. of Educ.*, 296 F. Supp. 1178 (E.D. Va. 1969) (three-judge court), state and local agencies expended almost $25 million under the program, including retroactive grants to Prince Edward County parents. Between 1954 and 1971, $1,697,329.46 in State and local monies were expended in tuition grants for pupils of the greater Richmond area. Of this amount, $894,734.70 was spent between 1965 and 1971 alone.

calculated to preserve segregation. It superseded "localism" *pro tanto*, for the law effectively made it impossible for a given locality to refuse to participate in the program. In the event of non-cooperation by the local authorities, grants would be made directly to parents; and the State withheld an equivalent local share of the State aid funds.[16] Now individual parents were given ultimate control over pupil assignments through the tuition grants.

This massive and continuing exertion of state powers to preserve segregation meant that the only way in which desegregation could be made effective was by judicial decree. The difficulty of bringing individual lawsuits against every school system, and the currency, prior to 1963, of judicial doctrine[17] that impeded enforcement of *Brown*, both substantively and procedurally, resulted in turn in little progress through the courts. Throughout Virginia, compliance with *Brown* remained token or worse.[18] This

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[16] Evidence domonstrating the extensive state-wide use of the tuition grant programs to perpetuate segregation is summarized in the district court's detailed findings of fact. A. 320-31; 338 F. Supp., at 141-46.

[17] Exhaustion of administrative remedies unless unquestionably futile was required, *e.g.*, *Carson* v. *Warlick*, 238 F.2d 724 (4th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957); *Adkins* v. *School Bd. of Newport News*, *supra*; *Jones* v. *School Bd. of Alexandria*, 278 F.2d 72 (1960), until this Court's decision in *McNeese* v. *Board of Educ.*, 373 U.S. 668 (1963). Similarly, class actions were not permitted until after *Green* v. *School Bd. of Roanoke*, 304 F.2d 118 (4th Cir. 1962). Desegregation was still not widespread after elimination of these problems, however, because ineffective pupil transfer and free choice plans received general approval. *E.g.*, *Bradley* v. *School Bd. of Richmond*, 345 F.2d 310 (4th Cir.), *rev'd on other grounds*, 382 U.S. 103 (1965).

[18] See, *e.g.*, U.S. Comm'n on Civil Rights, CIVIL RIGHTS, U.S.A.—PUBLIC SCHOOLS, SOUTHERN STATES (1962); U.S. Comm'n on Civil Rights, SURVEY OF SCHOOL DESEGREGATION IN THE SOUTHERN AND BORDER STATES 1965-1966 (1966).

was clearly true of the Richmond area schools in the city and Chesterfield and Henrico Counties.

Following the passage of the Civil Rights Act of 1964, the Virginia State Department of Education signed a compliance agreement with HEW in order to remain eligible for federal education funds. Again there was a shift in Virginia's view of the appropriate respective role of state and local authorities: the State Department of Education now claimed to be without power to police the compliance of local districts with federal law regarding student and faculty assignments. This new-found lack of power did not prevent the Department from encouraging resistance by local districts to HEW efforts, however.[19] Despite the State's role as a major source of funds for public education, the Department considered neither the Fourteenth Amendment nor its own compliance agreement as requiring it to withhold state funds or take any other steps against districts operating in violation of the Constitution.[20] As the district court has aptly described it:

> In the years since [*Brown*], the powers of the State Board of Education and the State Superintendent of

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[19] Although special counsel advised the State Department of Education as early as November, 1965 that free choice plans were probably never going to work satisfactorily and would likely be rejected by HEW and the courts in the near future, the State continued to assist in the defense of free choice and provided no leadership to local school systems faced with the task of desegregating.

[20] *Cf. Lee* v. *Macon County Bd. of Educ.*, 267 F. Supp. 458, *aff'd sub nom. Wallace* v. *United States*, 389 U.S. 215 (1967); *United States* v. *Georgia*, Civ. No. 12972 (N.D. Ga., Dec. 17, 1969), *rev'd on other grounds*, 428 F.2d 377 (5th Cir. 1970); *United States* v. *Texas*, 321 F. Supp. 1043 (E.D. Tex. 1970), *supplemental order* of April 19, 1971 (unreported), *modified and aff'd* 447 F.2d 441 (5th Cir.), *stay denied*, 404 U.S. 1206 (1971) (Mr. Justice Black, Circuit Justice), *cert. denied*, 404 U.S. 1016 (1972).

> Public Instruction have varied but slightly; what changes in law have been made have principally been to expand its powers. Other State educational agencies have come into existence and disappeared in intervening years as well. For the major part of this seventeen year period the State's primary and subordinate agencies with authority over educational matters have devoted themselves to the perpetuation of the policy of racial separation. They have been assisted in this effort by new legislation creating such programs as the tuition grant and pupil scholarship systems, the pupil placement procedures, and, by enactment passed while this case was pending, placing new limitations on the power of the State Board to modify school division boundaries. They have employed established techniques and powers as well to perpetuate segregation.
>
> Only very tardily and under the threat of financial coercion has the State Board of Education implicated itself in any respect in the desegregation process. In so doing it has conceived of its affirmative duty very narrowly, confining its efforts to those required by its compliance agreement with the Department of Health, Education and Welfare, and on occasion not even adhering to that.

A. 215; 338 F. Supp., at 93. The desegregation of Virginia public schools thus has rested upon the individual efforts of private litigants and the federal compliance effort unassisted by State cooperation. As a result, there was virtually no real desegregation in the State prior to *Green* v. *County School Bd.*, 391 U.S. 430 (1968). Most desegregation started no earlier than the 1969-70 or 1970-71 school years; the Motion for Further Relief which ulti-

mately led to the order here involved was filed March 10, 1970.

B. *The Greater Richmond Community.*

The order of the district court, reversed by the judgment of which review is sought, was intended to effectuate the desegregation of the public schools in the Richmond, Virginia area—and encompassing that city as well as the counties of Henrico and Chesterfield.[21] Richmond, approximately sixty-three square miles in area, lies nearly at the geographical center of the region and occupies an area both north and south of the James River. Henrico County (244 square miles) entirely surrounds the city at all points north of the James, and Chesterfield County (445 square miles) is likewise completely contiguous with and envelops Richmond south of the James. Other counties to the north and south of Henrico and Chesterfield, respectively, are separated from this Richmond metropolitan area in whole or in part by the Appomattox and Chickahominy Rivers. Virtually all of Henrico and most of Chesterfield County[22] lie within thirty minutes' travel of Capitol Square in Richmond, using regular streets and averaging twenty to forty miles per hour.

The two counties and Richmond are highly interrelated and mutually dependent upon one another. Typical of most urban areas, the central core city has ceased to register increases in population in the decennial censuses;

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[21] The entire area was a part of Henrico County originally; Richmond and Chesterfield County, among other political entities, were created from it. Subsequently the city annexed various portions of each county from time to time. The last such annexation, from Chesterfield County, occurred in 1970.

[22] This includes all of the areas which, under the plan approved by the district court, would send students at any grade level to a school or schools presently located within the city boundaries.

the additional population growth from 1950 to 1960 occurred in Henrico and in 1960 to 1970 in Chesterfield County; the most densely populated areas of each county are contiguous to Richmond. The 1970 Census reveals a total population of 480,840 in the area: 249,430 in Richmond, 154,364 in Henrico County and 77,046 in Chesterfield County.[23]

A variety of historical, economic and social indicators demonstrate the close functional unity of the area despite its superstructure of three independent political subdivisions. For example, evidence introduced at the trial indicated that prior to the 1970 annexation, over three-quarters of the jobs in the region (78% of those covered by Virginia's unemployment compensation program) were in Richmond, and analyses performed for the Richmond Regional Transportation study projected that the city would retain a similar proportion of metropolitan employment in the future (Tr. A-38, 43; RSBX 54, 55).[24] Similarly, pre-annexation Richmond accounted for 62% of the region's retail sales and 76% of the value added by manufacturing (Tr. A-42, 43).[25] The daily newspapers of general circulation throughout the area[26] are in Richmond, as are most local television and radio stations and a disproportionate number of public and private educational

[23] See table at p. 58 *infra*.

[24] The 1970 Census data which has become available since the trial bears out the projections. See pp. 71-74 *infra*. Evidence introduced at the trial showed that 42% of the attorneys who practiced in Richmond lived in the counties (51.4% reside in the city and 6.6% elsewhere), while approximately one-third of the State Education Department employees live in each of the three jurisdictions.

[25] Figures presently available show an increase in such indices. See text at note 139 *infra*.

[26] Tr. K-85; *cf.* note 45 *infra*.

and cultural facilities; for example, six of seven institutions of higher learning, including a medical college (Tr. A-45, M-12) and the major libraries and museums in the area (Tr. A-46; RSBX 59). Health services for the entire area are concentrated in Richmond (which includes within its boundaries 17 of the community's 18 hospitals), and most residents of the region are born in and die within Richmond.[27] Such public transportation as is available in each of the counties is almost exclusively directed toward travel between suburb and city rather than within each county.[28]

Although the region is divided among three political jurisdictions, among which there is a quite natural competitive spirit in various affairs, there have been numerous common actions for mutual benefit. Henrico County relies upon the fire and police services of Richmond at its county offices, which are located within the city; other parts of the county have in the past received fire protection from Richmond pursuant to agreement. There is presently a reciprocal fire assistance pact between Richmond and Chesterfield County (Tr. L-227). Pursuant to statute, the city and counties share concurrent regulatory jurisdiction over subdivision development in an area five miles around Richmond. The city has entered into 20-year sewage treatment and water supply contracts with Henrico County, which receives 90% of its water from Richmond (Tr. A-117, 120), as well as reciprocal supply agreements for these utilities with Chesterfield County (Tr. A-122-23).

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[27] Data compiled by the Richmond Planning Department from Bureau of Vital Statistics records showed that 70% of resident Chesterfield mothers, 79% of Henrico mothers and 94% of Richmond mothers gave birth within the city, while 49% of Chesterfield residents, 55% of Henrico inhabitants and 85% of all Richmonders died in the city (Tr. A-46; RSBX 61).

[28] For example, the only public transportation in Chesterfield County is two bus routes from Richmond (Tr. M-16, 17) (*cf.* PX 1).

Reports of the regional planning commission as well as those of independent consultants (some commissioned by county officials) have all noted the marked interdependence of the city and counties. The district court reviews those and much of the evidence introduced at the trial in its detailed findings (A. 401-16; 338 F. Supp., at 178-84);[29] an appropriate summation is the following comment of the Henrico County Circuit Court in a 1964 Richmond annexation suit:[30]

> Although community of interests is not necessarily as vital a consideration as other factors to be considered . . . this Court nevertheless feels that this factor should be given consideration. . . . Dependence of the central city of Richmond and the immediately surrounding county is mutual. [record citations omitted] The evidence shows that the commercial and civic interests of the city and county are largely identical.

1. Schools in the Community.

Each of the three school systems in the Richmond area was strictly segregated at the time of the *Brown* decision, in accordance with Virginia law, and remained so under

[29] We add, among the other factors which we do not detail for the sake of brevity, that Richmond and the two counties form a single Congressional district and that they, along with Hanover County (added by the Census Bureau in 1963 but with somewhat more diffused indices of interrelationship), make up the Richmond Standard Metropolitan Statistical Area. See note 92 *infra*, and accompanying text.

[30] Under Virginia law, cities commence annexation proceedings by passage of an ordinance and filing of suit to annex a specified amount of contiguous territory. A special court is designated which, after hearing, determines whether the prerequisites for annexation are met and then fixes a compensation award. The city may then accept or reject the terms. In 1964, Richmond declined to accept the terms fixed by the Court in its annexation suit against Henrico County and no territory was gained.

the Pupil Placement Board regime.[31] In 1961, this suit was commenced against the original defendants (the School Board of the City of Richmond and the state Pupil Placement Board) and the district court issued a decree directing the board and the Pupil Placement authorities to admit the individual named pupil plaintiffs to the formerly white schools they wished to attend.[32] Similar relief was obtained in Chesterfield County after suit was filed in 1962,[33] but until 1965 there was little more than token desegregation in any of the schools of the region. About that year, freedom of choice plans were adopted in each system—as the result of further judicial proceedings in the Richmond litigation, and following HEW compliance efforts in the two counties.[34] Again, the free choice plans produced little more than token integration (See Appendices to the district court's opinion, A. 524-32; 338 F. Supp., at 234-42.) In 1968-69 all of the traditionally black schools in the three jurisdictions remained all black.

Following threatened termination of federal financial assistance, Chesterfield County closed all formerly black facilities by the 1970-71 school year (its black student population was then less than 10%, down from 20% in

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[31] While the tuition grant and pupil scholarship programs existed, they were utilized by students in the Richmond area to avoid integration. From 1965 to 1971 alone, grants totalled $462,000 in Chesterfield, $286,000 in Henrico, and $97,000 in Richmond. The three divisions have expended nearly $1.7 million for tuition grants since *Brown*. See n. 15 *supra*.

[32] The Fourth Circuit reversed and directed the entry of a decree on behalf of the class of plaintiffs. 317 F.2d 429 (4th Cir. 1963).

[33] *McLeod* v. *County School Bd. of Chesterfield County*, Civ. No. 3431 (E.D. Va.).

[34] The *McLeod* case lay dormant from 1962 to 1971 and the Department of HEW undertook Title VI enforcement. A motion to consolidate this case with *McLeod* at the beginning of the trial was denied as untimely by the district court.

1954) except for the Matoaca Laboratory school, although significant faculty segregation remained. Similarly, in the 1969-70 school year, and under HEW pressure, Henrico County closed its formerly black facilities (although many were subsequently reopened as "annexes" to formerly white schools); however, zone line alterations resulted in one elementary school becoming over 90% black, and enrolling 40% of the county's black elementary students. It was also during the 1969-70 school year that the Motion for Further Relief was filed in the Richmond case, leading to the elimination of the free choice plan in the city.

Like the political bodies, Richmond's school authorities have worked together to meet the educational needs of the region. A modern vocational-technical training facility is operated by the Richmond system, enrolling a proportionate number of students from the three subdivisions. Together, several specialized joint schools are operated: two centers for mentally retarded children (one located in Henrico and another in that area of Chesterfield County annexed to Richmond in 1970), and a mathematics-science center in Henrico.[25] When annexations have resulted in capacity problems for one of the school districts, students have been educated in one of the other systems by contractual agreement until permanent facilities could be constructed (as was the case after 1970, when 3387 Richmond students continued to attend Chesterfield County schools). One Richmond high school is entirely within Henrico County, and one Richmond elementary school partly in the same county.

[25] Classes at the center are integrated and approximate the region's overall student population ratio.

2. Changing Internal Demography.

The Greater Richmond community experienced its most ustained and substantial growth in the period from just efore *Brown* v. *Board of Educ., supra*, to the present. Although prior to 1940, most of the population growth with- n the region was in the City of Richmond, over 90% of he increase in population since that year has occurred n Henrico and Chesterfield counties. Henrico made its ajor gains from 1950 to 1960, and Chesterfied in the 1960- 0 decade.

The population changes are, of course, reflected in the hanging enrollments of the region's schools. Enrollment n the Richmond system grew from 35,857 in 1954-55 to 7,604 in 1970-71 (including the pupils gained by the 1970 nnexation from Chesterfield County), while Henrico gained 1,328 during the period for a 1970-71 total enrollment f 34,470 and Chesterfield added 14,931 pupils for a 1970- 1 enrollment of 24,063 (reflecting also the pupils lost by he 1970 annexation).

The increasing suburbanization during the period is emonstrated by annexation of portions of Henrico and hesterfield Counties in 1942 (and an attempted Henrico nnexation in 1963) as well as the 1970 Chesterfield annexa- on. Furthermore, most of the population change in the etropolitan region is accounted for by newcomers rather an natural increase. During the 1950-1960 decade, for xample, one-half of Chesterfield's, and three-quarters of lenrico's population growth resulted from in-migration. rom 1960-70 over half of Henrico's increase resulted om in-migration.[26] In the same period, Richmond lost me 33,000 residents.

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[26] Similar information for Chesterfield County is unavailable nce census figures are not separately set out for the area of the unty annexed to Richmond in 1970. See United States Dep't of

The outstanding characteristic of this population change, however, has been its racially differential impact. Although the overall composition of the region has remained remarkably stable throughout its recent development (in 1940 the black population was 28%; in 1970 it was 26%), the distribution of whites and blacks throughout the area has not. The Richmond suburbs have been virtually restricted to whites. Even with the annexation of a predominantly white portion of Chesterfield County in 1970,[37] in that year the proportion of blacks to total Richmond population was slightly higher, at 42.3%, than it had been in 1960; Chesterfield and Henrico were 11.5% and 6.8% black, respectively.[38] Richmond accounted for only 25% of the white population gain in the SMSA[39] during the preceding decade, while Henrico and Chesterfield Counties received 60%[40] of that increase. On the

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Commerce, Bureau of the Census, CENSUS OF POPULATION: 1970 (G.P.O. PCH(2)-48, 1971). The preliminary, unedited version of this document (the final figures were not available at the time of trial) was introduced at the trial by Chesterfield County.

[37] The annexation added some 47,000 residents to the city; without it, instead of gaining nearly 30,000 people from 1960 to 1970, Richmond would have lost over 17,000. See *id.* at p. 5.

[38] In the preceding decade, Richmond lost total population but changed from 32% black to 42% black. Henrico more than doubled in size but dropped from 10% to 5% black, and Chesterfield grew by 75% but dropped from 21% black to 13% black. See table at p. 58 *infra*.

[39] In 1963 the Bureau of the Census added Hanover County to its definition of the Richmond Standard Metropolitan Statistical Area, which already had included Chesterfield, Henrico and Richmond. Hanover, which contains 7% of the SMSA population, accounted for 15% of its white population growth from 1960-1970. Its school system, 24% black in 1970, was the subject of separate litigation, see *Thompson* v. *County School Bd. of Hanover County*, 252 F. Supp. 546 (E.D. Va. 1966), and pursuant to an order entered by the same district judge who presided below, its schools were fully desegregated effective September, 1969.

[40] Richmond contains 48% of the total population in the SMSA.

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other hand, Richmond received 75% of the SMSA increase in black population during the decade.

Although at the time of *Brown,* Richmond's student population was 43.5% black and the counties' 20.4% and 10.4% black, respectively, by 1971-72 each county enrolled less than 10% black students while the Richmond system was over 70% black.[41]

The effect of these rapid changes, coming at a time when State and local authorities were steadfastly avoiding their legal obligation to eliminate dual systems of racially identifiable schools, was very significant. Particularly against the background of Virginia history,[42] any marked contrast between the racial composition of schools among the separate divisions made the elimination of racially identifiable schools more difficult due to the ingrained Virginia practice of making racial differentiations. Indeed, both Richmond educators and those from without the Commonwealth testified at the trial that the Richmond school system itself had become identifiable by race so that, realistically, identifiable

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[41] This distribution differs markedly from that in the counties surrounding. At the southern extremity of Chesterfield are three small "independent" city school systems—Petersburg, Colonial Heights and Hopewell, which are 67%, 0% and 18% black, respectively. The school systems of the counties surrounding the region enroll the following proportions of black students:

Hanover	24%
Charles City	84%
New Kent	56%
Prince George	26%
Dinwiddie	52%
Amelia	64%
Powhatan	40%
Goochland	57%

Each of these counties is far more sparsely settled than Henrico or Chesterfield.

[42] A. 187, 189; 338 F. Supp., at 80, 81. *Cf. N.A.A.C.P.* v. *Patty,* 159 F. Supp. 503 (E.D. Va. 1958), *rev'd on other grounds sub nom. Harrison* v. *N.A.A.C.P.,* 360 U.S. 167 (1959).

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schools would remain even were Richmond schools racially balanced, and the district court so found. (A. 201; 338 F. Supp., at 87; see also A. 186, 197, 445; 338 F. Supp., at 80, 85, 197.)[43] The Henrico County Superintendent of Schools testified that when Central Gardens Elementary School was finally desegregated in 1971-72, it was clustered with several other schools rather than being simply paired with the nearest predominantly white school, because in the latter instance, its racial composition (62% black) in the context of the county's overall ratio (8%) would leave it racially identifiable. (A. 395-96; 338 F. Supp., at 175.)

These perceptions of racial identifiability are substantially reinforced[44] by virtue of the contribution made by discriminatory governmental policies[45] toward the sort of

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[43] Other witnesses offered conflicting opinions; the detailed findings of the district court thoroughly discuss the expert testimony and contain the rationale for the court's resolution of the testimonial conflicts (A. 446-78; 338 F. Supp., at 198-212; see also A. 263; 338 F. Supp., at 115-16).

[44] A. 189-90; 338 F. Supp., at 81. *Cf. Brown* v. *Board of Educ.*, 347 U.S., at 494:

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; . . . .

[45] Virginia's policy of segregation has run the gamut from explicit ordinances, *City of Richmond* v. *Deans*, 281 U.S. 704 (1930), through enforceable racially restrictive covenants (which were extensively used in the Richmond area and which were not removed from title insurance policies until 1969 (A. 515; 338 F. Supp., at 228; Tr. E-11; Tr. R-143-44; 6/22/70 Tr. 828-40; PX 90) to discriminatory location of public housing projects (A. 494-97; 338 F. Supp., at 219-20). Likewise, the record reveals considerable private discrimination, doubtless encouraged by the State's official sanction: for example, the Richmond daily newspapers serving the area continued racially separate real estate listings until 1971, when the practice was discontinued in response to threatened litigation by the United States Department of Justice (A. 514-15; 338 F. Supp., at 228; PX 42A-42C). The record also traces in some detail the continuing effects, which have been noted by the President of the United States (A. 516; 338 F. Supp., at 229; PX 126) of the

racial isolation which has occurred in Richmond.[46] Of significance especially is the effect of the massive post-*Brown* programs to construct segregated schools in the metropolitan area:

> People gravitate toward school facilities, just as schools are located in response to the needs of people.

Swann, 402 U.S., at 20.[47]

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pervasive discriminatory practices of *federal* agencies such as FHA, which have by their financing activities greatly facilitated the process of metropolitan development. The district court further found that to the extent that housing patterns are viewed as the result of economic differentials, see note 46 *infra*, the differences between whites and blacks were attributable in part to the inferior segregated education offered by the Commonwealth of Virginia to those blacks who are now renting or purchasing homes and raising families. *Cf. Griggs* v. *Duke Power Co.*, 401 U.S. 424, 430 (1971); *Gaston County* v. *United States*, 395 U.S. 285 (1969). The historic inequality of black schools in Virginia—lower teacher salaries, smaller instructional expenditures, higher pupil-teacher ratios, inferior supplemental services (including libraries), and fewer accredited schools—was fully documented before the district court as confirmed by the Annual Reports of the Virginia Superintendent of Public Instruction.

[46] There was agreement among the expert witnesses that the racial demography of the Richmond metropolitan area was not unlike that found in other metropolitan centers across the nation. Dr. Karl Taeuber testified, based upon his own exhaustive researches on the subject, see K. Taeuber and A. Taeuber, NEGROES IN CITIES (1965), as well as his examination of the available data for Richmond and the two counties, that the disparate racial pattern of residence could not be attributed to either economic influences or the exercise of preference alone, but that the effects of racial discrimination were a major determinant.

[47] School construction throughout the region played a material part in residential development in at least three ways. First, in Richmond, as established black neighborhoods expanded and approached white schools (prior to the start of desegregation), the school authorities redesignated these schools for black pupils, with the result of solidifying the concentration of blacks and limiting their residential movement to areas peripheral to established black neighborhoods. Second, the counties' practice of building only

C. *The Litigation Below.*

1. Prior Proceedings.

This class action to desegregate the public schools of Richmond, Virginia was commenced in 1961 with the filing of a complaint charging officials of the Commonwealth of Virginia (the Richmond School Board and the Pupil Placement Board of the Commonwealth) with racial discrimination against black children. The initial district court order directed that the individual named plaintiffs be admitted to the white schools to which they desired to transfer but denied an injunction in favor of the class. The Court of Appeals reversed in part, directing limited class relief. 317 F.2d 429 (4th Cir. 1963). After further proceedings in the district court, the Court of Appeals rejected plaintiffs' challenge to free transfer desegregation plans and held also that faculty desegregation would not be required. 345 F.2d 310 (4th Cir. 1965). This Court granted certiorari on the issue of faculty desegregation, reversed, and directed that the process of faculty desegregation be commenced. 382 U.S. 103 (1965).

Upon remand from this Court, a consent decree was entered which embodied a freedom-of-choice plan, provided for faculty desegregation, and obligated school authorities to replace free choice if it failed to produce results. However, despite continuation of the patterns of segregation,

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white schools (during the same period) in their most urbanized areas contiguous to Richmond established a disincentive for blacks to relocate in the suburbs: black children were transported, for example, to Virginia Randolph High School in the northern part of Henrico County or Carver High School near Chester in mid-Chesterfield County—each the only high school for blacks in the respective counties. See *Northcross* v. *Board of Educ.*, Civ. No. 3931 (W.D. Tenn., Dec. 19, 1971) (at p. 10), *aff'd* No. 72-1630 (6th Cir., Aug. 29, 1972). Finally, just as described in *Swann*, 402 U.S., at 21, the process of greatly expanding school capacity for white students outside the city while converting white schools to black schools (rather than closing them) within Richmond had an inevitable correlative effect upon housing segregation.

Richmond school officials took no action, and on March 10, 1970 the plaintiffs filed a motion for further relief, relying upon *Green* v. *County School Bd.*, 391 U.S. 430 (1968).

2. Proceedings on the 1970 Motions for Further Relief.

After the motion for further relief was filed and following an admission by the Richmond School Board that its free choice plan probably did not meet then current constitutional standards, the district court directed submission of new plans of desegregation for the Richmond public schools. Initially the Richmond School Board submitted a plan, prepared with the assistance of the Department of HEW, based upon neighborhood zoning without the utilization of pupil transportation. The plaintiffs, through an educational expert, submitted an alternative plan using all of the techniques subsequently validated by this Court in *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971), as applied to the schools operated by the defendant Richmond School Board. On June 26, 1970, at the conclusion of an evidentiary hearing on the plan submitted, the district court rejected the HEW plan and afforded the Richmond School Board an additional opportunity to submit its own alternative plan. The Board thereafter proposed a plan which incorporated the use of pupil transportation at the secondary levels but avoided it at the elementary levels, and which would not achieve as much desegregation in the public schools of Richmond as plaintiffs' plan. Following a hearing in August, 1970, the district court permitted the School Board to implement its second plan on an interim basis for the 1970-71 school year, for the explicit reason that sufficient time was no longer available within which to acquire the transportation capacity necessary to implement a plan like that submitted by the plaintiffs, which the district court expressly approved as "reasonable" within the meaning of the then applicable

law [*Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 431 F.2d 138 (4th Cir. 1970), *rev'd* 402 U.S. 1 (1971).] 317 F. Supp. 555 (E.D. Va. 1970).

The district court's opinion and order instructed the Richmond School Board that a plan which achieved as much or more desegregation than that submitted by the plaintiffs would have to be implemented not later than the 1971-72 school year, while again affording the school Board another opportunity to submit such a plan drawn by its officials.

> . . . The Richmond public schools cannot be desegregated without using the techniques used by Dr. Foster such as non-contiguous zoning, pairing, clustering of schools and transportation, . . . [317 F. Supp. at 575]

Accordingly, the School Board was directed to notify the district court within 90 days of the steps it had taken to implement a constitutional plan and of the earliest date such a plan could be put into operation in the Richmond public schools. On November 15, 1970, counsel for the Richmond Board informed the district court by letter that new plans would not be filed until January, 1971.[48]

[48] On December 9, 1971, plaintiffs accordingly filed a motion seeking an order requiring implementation of their alternative plan effective with the second semester of the 1970-71 school year, which they contended was required under *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969) and *Carter* v. *West Feliciana Parish School Bd.*, 396 U.S. 290 (1970). The district court also had before it a motion of the School Board seeking to vacate a *pendente lite* construction injunction, see, *e.g.*, *Calhoun* v. *Cook*, 430 F.2d 1174 (5th Cir. 1970), which it had issued following the first hearings on the motion for further relief. In an opinion reported at 324 F. Supp. 456 and entered January 29, 1971, the court denied the motion to implement plaintiffs' plan and vacated its injunction as to those proposed construction projects to which plaintiffs had no objection.

On January 15, 1971, the School Board of Richmond filed three alternative desegregation plans limited to the Richmond schools;

In the meantime, on November 4, 1970, the School Board of the City of Richmond filed a motion to join additional parties (the School Boards and Boards of Supervisors of Henrico and Chesterfield Counties as well as their school superintendents, the State Board of Education, and the State Superintendent of Public Instruction) pursuant to Rule 19, F.R.C.P., on the ground that full and effective relief could not be granted to plaintiffs without the joinder of these parties.[49] The district court invited counsel for the parties sought to be joined by the motion to appear and present argument concerning the sufficiency and propriety of the motion. After a hearing before the court

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following an evidentiary hearing on March 4, 1971 (at which counsel for the added defendants were invited to express any views concerning the appropriate relief required within the City of Richmond should the claim against them be held insufficient), the district court approved one of the plans proposed by the School Board and directed its implementation commencing with the 1971-72 school year. In doing so, the court expressly predicated its conclusion that the School Board's plan met the requirements of the law upon the assumption that no additional relief against the joined parties which might be ordered had yet been litigated. 325 F. Supp. 828, 830 n.1 (E.D. Va. 1971).

[49] On June 25, 1970, Dr. Thomas Little, Associate Superintendent of the Richmond Public Schools, testified on cross examination that if he were directed to develop an optimum desegregation plan for Richmond, such a plan would involve an area larger than the Richmond City school division:

> Q. Dr. Little, assuming transportation of pupils, is there any way to achieve what you consider to be, as an educator, an optimum of desegregation in the Richmond area? A. In the Richmond area, yes.
>
> Q. How would you do that? A. It would involve the involvement of a larger area than the present city boundaries of the City of Richmond.
>
> Q. Are you talking about Henrico County, Chesterfield County, or both? A. Henrico County, Chesterfield County, and the possibility of the general metropolitan area, maybe bordering on, in other counties other than Henrico and Chesterfield. Basically, the problem could be solved within the City of Richmond, Henrico and Chesterfield Counties. [6-25-70 Tr. 1122-23].

and submission of memoranda, the district judge found, without intimating any view on the merits of whatever underlying claims might be made, that it was appropriate to grant the motion in order to litigate the duty, if any, owed by the additional defendants to the plaintiffs or the Richmond School Board. The court noted that its finding with respect to a desegregation plan for the City of Richmond was

> . . . made in the context of litigation between Richmond residents and Richmond officials alone. It is by no means inconsistent with the existence of a duty on the part of officials with broader powers to exercise such powers to afford different or additional relief from what the Court has found to be state-imposed segregation. The addition of further parties, moreover, alters the range of alternatives, some of which may be shown as feasible and more promising in their effectiveness. Green v. County School Bd. of New Kent County. [citations omitted]. It is with an eye to this range of choices between means to provide desegregated schools that the legal sufficiency of a proposed unitary plan is to be tested.

51 F.R.D. 139, 141 (E.D. Va. 1970). At the same time, the district court set forth its view of the issues which would be presented by claims involving the additional defendants, in terms to which the court consistently adhered during subsequent proceedings:

> Certain of the additional parties have a direct affirmative obligation toward the Bradley plaintiffs, and others of them might well be necessary in order that the first can fulfill that obligation; the question remains whether in fact that obligation has been fulfilled. On that point the position of the instant plain-

> tiffs is not clear. They demand a unitary school system. However, whether it is their contention that this may or must be achieved by the formation of a consolidated school division or by other means beyond the power of the present defendants does not appear with clarity from the pleadings. The measure of the effort which may be required of those sought to be joined may depend upon both the extent to which the actions, if any, of these persons or their predecessors have contributed to the existing situation, and also the reasonableness of the remedial steps which are available.

Id. at 143. Accordingly, plaintiffs were directed to file an amended complaint "wherein they set forth both those alleged facts which they contend give rise to an obligation on the part of those joined to take steps to achieve a unitary school system for the class they represent, and also the particular relief demanded." *Id.* at 143-44.

Plaintiffs' amended complaint, filed December 14, 1971, alleged constitutional violations on the part of all added defendants and concluded with a prayer stated in the alternative—the text of which is set out in the margin.[50]

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[50] "WHEREFORE, plaintiffs respectfully pray that this Court enter its Order requiring all defendants, jointly and severally, to take all necessary action to require forthwith the consolidation or merger of the defendant school systems in all aspects of school operation and administration, including but not limited to, the appointment of an Acting Superintendent to manage the consolidated systems, the merger of the existing boards of education pending the selection, by election, appointment or otherwise, of a new board of education representative of the consolidated systems; and further requiring that that board shall be the successor board of education to the defendants SCHOOL BOARD OF THE CITY OF RICHMOND, SCHOOL BOARD OF HENRICO COUNTY and SCHOOL BOARD OF CHESTERFIELD COUNTY, assuming all rights, powers, responsibilities, duties and obligations presently held, in whole or in part, by the defendant school boards; and further requiring that each defendant shall, by

Following disposition of a series of pre-trial motions by the state and county defendants,[51] the district court conducted a series of pretrial conferences during the spring of 1971 in order to clarify the issues and facilitate the trial.[52] Prior to the start of the trial but following the

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withholding of funds or accreditation and by the exercise of any and all powers available to each, insure the full cooperation of the other defendants and the prompt accomplishment of said consolidation or merger.

In the alternative, plaintiffs pray that the Court require defendants Board of Supervisors of Henrico County, Board of Supervisors of Chesterfield County, City Council of Richmond, School Board of Henrico County, School Board of Chesterfield County and School Board of the City of Richmond, acting by and through the State defendants, to enter into such agreements, contracts or otherwise to provide for the joint operation of the educational systems of the City of Richmond and the Counties of Henrico and Chesterfield, with free availability of all facilities for pupil attendance, and tri-system-wide assignment of pupils, teachers, school plant, transportation facilities and all other incidents of school operation, to the end that no school within the respective defendant school systems shall be racially identifiable.

Plaintiffs further pray that this Court require the defendants to prepare and submit for approval of the Court a plan for the operation of all of the public schools within the defendant school systems in conformity with the requirements of the Fourteenth Amendment, including but not limited to, the establishment of schools, pupil populations, staffs, faculties, transportation routes and extracurricular activities which are not racially identifiable, and to be effective with the commencement of the 1971-72 school year."

[51] On January 8, 1971, the district court denied a motion to recuse which had been made by several of the added defendants. (A. 58-90; 324 F. Supp. 439). On February 10, 1971, the court denied a motion to dismiss as to certain of the added defendants in their individual capacities (A. 107-09; 324 F. Supp. 401) and on the same date denied the motion of several of the joined parties to convene a three-judge court pursuant to 28 U.S.C. §2281 to hear and determine the cause (A. 98-106; 324 F. Supp. 396). Additional pre-trial motions were disposed of in two unreported orders (A. 91-97).

[52] When the Richmond School Board made known, in the course of the pre-trial proceedings, that it intended to prepare and present a plan for the accomplishment of desegregation in the greater Rich-

filing of the joinder motion and the amended complaint, the General Assembly of Virginia amended the Education Code so as to restrict the previous power of the State Board of Education to subdivide the Commonwealth into school divisions. The new statute, passed by a legislature conscious that the amendment might have an effect on this very litigation, required the consent of existing local school boards and governing bodies of political subdivisions before the State Board might place two or more cities or counties, or a city and one or more county, within the same school division.[53]

Evidence was received August 16-20, 23-27, 31 and September 1-2, 7-10 and 13, 1971.

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mond community, involving the schools within the Richmond and county systems, the district court urged the parties, and in particular the added state and county defendants, to examine the proposed plan (which the court instructed the School Board to tender prior to the hearing) and confer with the Richmond school officials in order that they might (a) suggest any preferable alternatives to the district court and (b) avoid unnecessary delay in implementation of a metropolitan desegregation plan, should the relief requested in the motion for joinder, amended complaint, and cross-complaint of the Richmond School Board (filed January 15, 1971) be granted. (Tr. 4/23/71 6-9, 39; Tr. N-154, 249). Despite written invitation from counsel for the Richmond Board, the county boards and their administrators never accepted the opportunity to confer in order to improve upon the plan submitted by the Richmond Board to demonstrate the feasibility of the relief, nor did they express a preference prior to the entry of the judgment in the district court for achieving the relief sought by plaintiffs through either consolidation or joint operation pursuant to contract. Nevertheless, the district court's opinion invited post-judgment motions for reconsideration, submitting alternative plans or suggesting improvements to the Richmond School Board plan (A. 519; 338 F. Supp., at 230).

[53] Following enactment of this statute, the motion to convene a three-judge court was renewed (see n. 51, *supra*) and again denied by the district court (A. 156).

3. Conditions at the Time the District Court Rendered Its Judgment.

Upon the implementation of Plan III in Richmond (see note 48 *supra*), the district court was able to measure the effectiveness in eliminating the racial identifiability of schools, of a plan utilizing the known and accepted techniques of desegregation to the maximum extent possible within the City of Richmond. As the court said in approving the plan:

> A comparison of the projected racial attendance figures for each school with the system wide ratio reveals that . . . the School Board, *if this proposal succeeds as planned*, will have eliminated the racial identifiability of each facility to the extent feasible within the City of Richmond.

(A. 121; 325 F. Supp., at 835) (emphasis added).

The 1971-72 enrollment figures available to the district judge prior to his ruling showed not only that Plan III had not "succeed[ed] as planned" upon implementation,[54] but that racially identifiable schools were still maintained within the context of the Richmond community's school system.

In 1971-72 more than half of Richmond's schools were over 70% black, and a fifth were over 80% black. Schools which had always been black—under Pupil Placement, free choice, and the interim plan—remained so: Maggie Walker High School, the original Richmond high school for blacks (77%); Armstrong High (72%); Kennedy High School, physically located within Henrico County (89%); Graves

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[54] Many schools—particularly traditionally black schools—opened with proportionately greater black enrollments than had been projected (A. 530-32; 338 F. Supp., at 240-42).

middle school (74%); Mosby middle school, the largest in the system, built in 1963 to serve only black pupils (86%); Chandler middle school, converted from a "white" to a "black" school before there was any desegregation (89%); and many elementary schools—some built as or converted to black schools, Baker (80%), Blackwell (85%), Fairmount (80%), Mason (83%), Norrell (83%), Stuart (79%) —others which became black schools during free choice, such as Highland Park (84%).

These results, underlining the attendance of 56% of Richmond's black students in schools more than 70% black, are the more meaningful in the metropolitan context, for Richmond enrolled over 85% of all black pupils in the community while the county systems were each less than 10% black, and most county schools virtually all white. Of the 132 schools operated within the entire area (whose total composition was 65% white), 78 were clearly racially identifiable: 31 were 70% or more black while 47 were over 90% white. The predominantly black schools were clustered within Richmond and the white schools within Henrico and Chesterfield counties.

During the period 1955-1970, the enrollment of white students at schools within Chesterfield and Henrico counties increased by 37,000; in the same period, schools within Richmond experienced a decrease in white enrollment of more than 7500.[55, 56]

The composition of the faculties at the various schools also tended to be correlated with the racial makeup of their

[55] This figure excludes white students added to the city schools by virtue of the annexation of a portion of Chesterfield County in 1970.

[56] The Richmond Board reported a continuing and accelerating loss of white students from its system (A. 521; 338 F. Supp., at 231).

student bodies, although overall there was a smaller percentage of black teachers than students and the differences between schools were not as marked.

At the same time, of the total 106,000 students enrolled in the public schools of the region, some 68,000 received transportation furnished by school authorities. (Of this number, only some 20,000 students were bused in connection with attempted desegregation.) The school systems owned a total of more than 600 buses, most of which were of 66-passenger capacity.

4. The District Court's Ruling.

On January 5, 1972, the district court issued its Memorandum, which contains a short history of the case (A. 164-85; 338 F. Supp., at 70-79), general factual findings and conclusions together with a discussion of applicable legal principles (A. 185-263; 338 F. Supp., at 79-116), and extensive, detailed, specific findings of fact supportive of the general findings and conclusions (A. 185-545; 338 F. Supp., at 116-230).

The district court concluded that, in spite of the implementation of Plan III and the taking of various steps toward desegregation in the county school systems, the schools in Richmond and the counties remained racially identifiable, viewed in terms of the common sense perceptions of students and parents based upon deviations from the community-wide ratio, or of the informed judgment of professional educators, or of the history of discrimination and segregation in Virginia (A. 186-90; 338 F. Supp., at 80-81). Indeed, the court found, such schools would remain under any desegregation plan which might be implemented within the existing district lines (A. 207-11, 236-39; 338 F. Supp., at 90-91, 103-04). Therefore, in light of its obligation (and that of the school author-

ities) to achieve the greatest amount of desegregation practicable, not limited by artificial boundaries,[57] the district court considered whether any compelling or even legitimate State interest in maintaining the existing school district lines would prevent the combination of city and county schools in a desegregation plan which would satisfy that obligation, and thereby eliminate racially identifiable schools (A. 190-93; 338 F. Supp., at 81-83).

In light of the past crossing of division lines freely to perpetuate segregation (A. 193-95; 338 F. Supp., at 83-84), the coincidence of the boundaries with highly segregated residential patterns—which were shown to have resulted in part from racially discriminatory practices by private individuals and public agencies, including the school construction practices of the separate school systems (A. 195-207, 211; 338 F. Supp., at 84-89, 91-92), and the shared control of public education—utilized in the past to avoid and resist desegregation—between local and state authorities, including the shared power to consolidate school divisions (A. 212-21, 227-36; 338 F. Supp., at 92-96, 98-103), the district court concluded that it was appropriate, under the facts and the analogous precedents, to require state and local authorities to act in concert to facilitate execution of a desegregation plan for the Richmond area schools, crossing existing district lines in order to provide effective desegregation (A. 222-26, 239-59; 338 F. Supp., at 96-98, 104-13).

Because of the long delay since this Court's decision in *Brown* in implementing desegregation, which had made vindication of the constitutional mandate far more difficult, the district court determined that adequate relief should be implemented with the 1972-73 school year and

[57] *Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 37-38 (1971).

approved the Richmond Board's plan for achieving metropolitan desegregation, subject to requested modifications or new proposals consistent with implementation in 1972 (A. 259-63; 338 F. Supp., at 114-16).[58]

On January 10, 1972, the district court entered an order in accordance with the opinion (A. 536-45; 338 F. Supp., at 244-48) which established a time schedule within which the state and/or county defendants were to take appro-

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[58] The metropolitan desegregation plan presented by the Richmond School Board was the only plan put before the court by any of the parties. See note 52 *supra; cf. United States* v. *Board of Educ. of Baldwin County*, 423 F.2d 1013 (5th Cir. 1970). It incorporated consolidation of the existing Richmond, Henrico and Chesterfield school systems into a new structure fashioned in accordance with Virginia law, in addition to the reassignment of students among the various schools in the Richmond community. The plan is briefly described in the dissenting opinion of Judge Winter below (A. 586-89) and in careful detail in the district court's opinion (A. 418-32; 338 F. Supp., at 186-92). Although the Richmond Board's plan was made available to the state and county defendants in advance of trial, in accordance with the district court's instructions, they offered no alternative of their own but did present several expert witnesses who attacked the plan, and particularly its consolidation features. In turn, the plaintiffs and the Richmond Board presented expert testimony in support of the educational soundness and feasibility of metropolitan desegregation in general, and the Board's suggested plan in particular. The district court resolved such conflicts as existed in the expert testimony in favor of plaintiffs and the Richmond Board. (A. 446-78; 338 F. Supp., at 198-212; see also, A. 263; 338 F. Supp., at 115-16.) One of the educators offered by the Richmond Board was Dr. Thomas Pettigrew, who supported the plan on generally accepted educational principles and also because it had the added virtue, in his view, of according with his own interpretation of social science data to the effect that schools between 20% and 40% black will be most successful. The district court recognized Dr. Pettigrew's views (A. 437-39; 338 F. Supp., at 194-95) but hardly gave them controlling weight; however, the Court of Appeals viewed the testimony of Dr. Pettigrew, an educator called to support the feasibility of a plan he had nothing to do with preparing, as indicating that the design and goal of the Richmond Board plan—and hence the district court's order—was the achievement of a "racial balance" (A. 567-70).

priate steps pursuant to Virginia law [Va. Code Anno. §§22-100.1, *et seq.*] to implement the Richmond Board's plan, including the creation of a consolidated school division, transfer of title to school buildings to the new division, and appointment of an acting Superintendent for the new division. Further, the State defendants were directed to promulgate regulations within their statutory authority for the financial operation of the consolidated division, and to prepare an organizational plan for the new division. With the assistance of the counties, they were to adjust the Richmond Board plan to demographic changes and submit any desired modifications of the plan to the district court; and finally, within 90 days they were to submit a detailed plan of execution to the court which, if approved, would be implemented in September, 1972.[59] Following expedited appeal, the judgment of the district court was reversed June 5, 1972 (A. 557-85), Judge Winter dissenting (A. 585-602).[60]

[59] On January 19, 1972, the district court denied a stay of its order pending appeal, noting that the order by its terms would not result in the transfer of any students for six months, during which period essentially planning functions would be carried out (A. 549-50). Thereafter, on February 8, 1972, the Court of Appeals stayed all provisions of the order except those explicitly regarding continued planning, although it left to the State Board's discretion whether a provisional school board for a merged division should be formed; it also expedited the appeals (A. 553-56).

[60] The Court of Appeals' opinion is discussed *infra*, Part I(A) at pp. 46-54.

Reasons For Granting the Writ

The Fourth Circuit's decision should be reviewed and corrected by this Court for the following reasons, which we summarize here and develop in the designated subparts below:

First, the Fourth Circuit has decided a basic legal question standing at the threshold of the most significant school desegregation problem of the times. The question is whether school district or "division"[61] lines impose narrow and inflexible limits upon the otherwise broad and flexible equitable powers of the federal courts[62] to fashion a desegregation decree "'that promises realistically to work, and promises realistically to work *now*.'"[63] (Part I(A), *infra*.) The problem is how to cope with the impacted black center-city schools of large metropolitan ghettos which are impossible to desegregate, or to desegregate effectively, within the narrow, inflexible limits of single-district desegregation plans. (Part I(B), *infra*.)

In many metropolitan areas, as in Richmond, these impacted black schools simply cannot be integrated into a unitary system "without a 'white' school and a 'Negro' school, but just schools"[64] by means of any desegregation plan that is confined to the schools of one school district.

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[61] What Virginia terms "school divisions" are elsewhere more generally called "school districts." We shall use the terms interchangeably hereafter, ordinarily speaking of "districts" when our discussion is general or national and of "divisions" when we focus upon the Virginia scene.

[62] See *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971); *Brown* v. *Board of Educ.*, 349 U.S. 294, 300 (1955) [hereafter sometimes cited as *Brown* (II)].

[63] *Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 38 (1971), quoting *Green* v. *County School Bd.*, 391 U.S. 430, 439 (1968).

[64] *Green* v. *County School Bd.*, 391 U.S. 430, 442 (1968).

In other metropolitan areas, single-district plans can palliate the segregation of the all-black center-city schools in some measure, but they cannot achieve "the greatest possible degree of actual desegregation"[65] with the greatest efficiency and the least community cost.[66]

If the Fourth Circuit is correct that the Tenth Amendment or some other abstract doctrine categorically forbids inter-district desegregation orders by the federal courts (in the absence of proof, ordinarily unavailable whether or not the fact be true, that school district lines have been maintained with racially discriminatory motivation), then this Court should surely not delay in saying so. That pronouncement—*Brown* v. *Board of Education*[67] stops short at every district line—ought to come authoritatively or not at all. School officials, communities, courts and lawyers struggling to desegregate metropolitan schools deserve to be told immediately to direct their efforts toward plans, whether or not fully effective, that are district-limited. And where district-limited plans are palpably futile to effect desegregation, they should be told immediately to give desegregation efforts up.

If, on the other hand, as we believe, the Court of Appeals is wrong in allowing every individual school district to "draw a line of fire around its boundaries"[68] through which

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[65] *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 26 (1971).

[66] Consider, for example, a school district whose black population is concentrated in a large east-end ghetto. A single-district desegregation plan might require extensive cross-district transportation of students, whereas a plan that included schools of a white residential suburb in the next district to the east, closely contiguous to the black ghetto, could provide far greater integration with far less pupil dislocation.

[67] 347 U.S. 483 (1954) [hereafter sometimes cited as *Brown* (I)].

[68] The phrase is Mr. Justice Holmes', in *Direction der Disconto-Gesellschaft* v. *United States Steel Corp.*, 267 U.S. 22, 28 (1925).

federal courts enforcing *Brown* v. *Board of Education* may not pass, then this Court should still more quickly set that error right. The "obligation of every school district . . . to terminate dual school systems at once" [69] should no longer be deferred in the metropolitan regions of the Fourth Circuit and in other metropolitan regions where the Fourth Circuit's doctrine will be urged—now, more than eighteen years after *Brown* (I)—as a further ground for postponing too-long-postponed desegregation.

Second, the Fourth Circuit's decision is not merely inconsistent with approaches to metropolitan desegregation that have previously been announced by lower federal courts in other circuits. (Part II(A), *infra*.) It also defeats the premises upon which extensive litigation is presently proceeding in numerous of those courts. (Part II(B), *infra*.)

Complaints seeking inter-district metropolitan desegregation orders are pending at this time in district courts in at least six circuits other than the Fourth. If the Fourth Circuit is correct that such orders are doctrinally forbidden (or allowable only upon a showing of racial motivation in the drawing of school district lines), then federal lawsuits in Atlanta, Boston, Hartford, Indianapolis, Louisville, Wilmington, and other cities are now being conducted upon theories that are going to result in a wholly deplorable waste of judicial time.

Invoked by defendants in those lawsuits, the decision of the Fourth Circuit in this Richmond case will abort or radically redirect them—properly, if the decision is correct; intolerably, if it is not. But, whether or not it is correct, if unreviewed it will needlessly complicate and delay litigations that are already sufficiently complicated and

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[69] *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19, 20 (1969).

ıave been more than sufficiently delayed. Under these cir-umstances, the exercise of the Court's *certiorari* jurisdic-ion is uniquely called for, to provide guidance to the ower courts in a matter of the most immediate and wide-pread importance.

Third, the present case presents an excellent vehicle for urnishing such guidance. (Part III, *infra*.) The problems f metropolitan school desegregation are thoroughly ex-lored in the voluminous evidentiary record made before ıe District Court. The District Court has written an nusually comprehensive opinion containing detailed find-ıgs of fact. Much of the background of the case—the his-ory of school segregation and desegregation in Virginia—already well known to this Court.

In that familiar framework, the new issue of metro-olitan desegregation emerges with signal clarity. It is ot confused by adventitious yoking with *de-jure-versus-e-facto* issues (whatever those labels may cover in other ontexts), or with busing issues. (The amount of busing quired by the District Court's Richmond-Chesterfield-enrico unitary desegregation plan does not greatly exceed e amounts previously required in the three divisions con-dered separately; and the Court of Appeals had no oblem concluding that "[t]his is not a bussing case" . 563, n. 2).) Nor is the metropolitan issue compli-ted by a welter of school districts (only three are affected the District Court's unitary plan), or by embarrassing ate-law impediments to their joinder in a single plan the contrary, Virginia law makes express and detailed ovision for virtually every mechanism necessary to effect tri-division consolidation ordered by the District urt).

The ground upon which the Court of Appeals decided case gives rise to a clear-cut legal issue that is illumi-

nated but not entangled by its factual setting. That issue is whether school district boundary lines are sacrosanct as a matter of constitutional law where a federal district court concludes that they must necessarily be crossed in order to desegregate effectively a 70% black city completely surrounded by two 90% white counties, all comprising a metropolitan region that is integrated economically and socially but for race. No significant factual disputes about the characteristics of the Richmond metropolitan area divide the District Court and the Court of Appeals; to the slight extent that those two courts differ in their interpretations of the basic facts, the differences are matters of legal inference which it is the proper office of this Court to decide.

Furthermore, the record and the framing of the issue before this Court will allow the Court to do for multi-district metropolitan desegregation cases what it has previously found it wise to do for other desegregation cases: to "provide some guidelines for the exercise of the district judge's discretion and for the reviewing function of the courts of appeals," [70] without itself entering into nitty-gritty applications of those guidelines in a fashion inappropriate for a court of ultimate review, and without descending to particulars that would frustrate "the appropriate scope of equity." [71] This is so because the decisive issue presented by the case is the doctrinal correctness of the Fourth Circuit's view regarding the constitutional impermeability of school district lines. Once that issue is resolved, the Court can proceed as far as it may then think fitting to define the principles that ought govern application of the remedial discretion of *Brown* (II) and *Swann* in metropolitan contexts. This record will support

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[70] *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).

[71] *Id.*, at 31.

consideration of those principles at whatever level of generalization or detail the Court deems advisable.

Fourth, the Court of Appeals' decision of the threshold legal issue conflicts with and curtails applicable decisions of this Court, and imposes uncertain and unworkable limitations upon established doctrines of constitutional law and federal equitable power. Specifically:

A. The Court of Appeals ignores or eviscerates the vital principle that the Fourteenth Amendment, and its Equal Protection Clause in particular, address their commands to the State; that the State is the ultimate agency which is responsible constitutionally to provide equal protection to the races; and that this responsibility cannot be evaded by the manner in which a State chooses to carve up its territory, arrange its governmental structure, or delegate its functions or authority among internal subdivisions. (Part IV(A), *infra*.)

B. The Court of Appeals turns the Constitution on its head by the unprecedented holding that the Tenth Amendment limits the Fourteenth and insulates a State's internal administrative divisions against federal judicial alteration even where those divisions operate to defeat Fourteenth Amendment rights. (Part IV(B), *infra*.)

C. The Court of Appeals imports into the jurisprudence of Equal Protection a test of invidious racial motivation which this Court has previously been scrupulous to resist, and which threatens to nullify the constitutional guarantee of equal treatment of the races. (Part IV(C), *infra*.)

D. The Court of Appeals impermissibly restricts the remedial powers of a federal court of equity, both as this Court has developed them generally and as it has directed the district courts to use them in school desegregation cases. (Part IV(D), *infra*.)

I.

The Fourth Circuit's Decision Balkanizing *Brown* v. *Board of Education* Is of Grave and Widespread Importance Because It Broadly Denies the Promise of *Brown* to the Children of the Metropolitan Ghetto.

A. *The Fourth Circuit Essentially Confines Federal Court Remedies for Unconstitutional School Segregation Within the Limits of Individual School District Boundary Lines.*

In the opening paragraph of his majority opinion for the Court of Appeals, Judge Craven states the issue as the Fourth Circuit perceives and decides it:

> May a United States District Judge compel one of the States of the Union to restructure its internal government for the purpose of achieving racial balance in the assignment of pupils to the public schools? We think not, absent invidious discrimination in the establishment or maintenance of local governmental units, and accordingly reverse. (A. 562.)

Understood as it must be in the context of this record—with "restructure its internal government" meaning nothing more than to quit treating school division boundary lines as impassable frontiers across which pupils may not be assigned,[72] and "racial balance" meaning nothing less

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[72] The District Court in this case did, of course, order the consolidation of the school division of the City of Richmond with those of Chesterfield and Henrico Counties, pursuant to the provisions of Virginia law governing school division consolidations. That particular form of inter-division desegregation plan was the product of the history of the litigation, as well as of the characteristics of the Richmond metropolitan area as the District Court found them.

After the District Court had granted the Richmond School Board's motion to join the county and state defendants and had plainly ruled that the Richmond city schools could not be desegregated effectively by a plan limited to the city's boundaries, it permitted ample and reiterated opportunity to all parties to submit plans, assist the court by suggestions, or cooperate with each

[22] *(continued)*
other in devising proposals, for any sort of inter-division desegregation decree that would work. Among all the defendants, only the Richmond School Board offered a plan; and it was this Richmond School Board plan calling for consolidation that the District Court eventually embodied in its opinion and order. (See notes 52 and 58 *supra*.) No defendant in the District Court suggested any form of plan which went beyond the boundaries of the City of Richmond but did not involve consolidation. Quite naturally and properly, then, the District Court took the question before it to be the one on which the parties had drawn issue: whether its decree was legally required to be "circumscribed by school division boundaries." (A. 186; 338 F. Supp., at 79; see the Court's exhaustive discussion of that question at A. 185-263; 338 F. Supp., at 79-116.) A negative answer to that question was accepted by all parties as decisive of the propriety of the Richmond School Board plan.

However, even after its thorough study of the feasibility of the Richmond Board Plan and after writing an exhaustive opinion providing for the manner of implementation of that plan, the District Court showed entire flexibility with regard to its modification. It said that "with the cooperative efforts of the other educators within the proposed Metropolitan Plan, perhaps an even better plan will emerge" (A. 262; 338 F. Supp., at 115); and it expressly stated (1) "that the Court stands ready at any time to consider any proposed modification of the plan to be approved" (A. 519; 338 F. Supp., at 230; see also A. 435; 338 F. Supp., at 193), and (2) that the reason why the court felt it "necessary . . . not to await any proposed modifications, but to order the plan to be implemented" was in order that "a metropolitan school system [providing effective desegregation] will be in effect for the commencement of schools in September 1972" (A. 262; 338 F. Supp., at 115). Once again, then, the state and county defendants had the opportunity to contend—if such was their contention—that the court's basic ruling of the propriety and necessity of an inter-division plan ought not to be implemented by the device of consolidation. They made no such contention, but immediately appealed.

And on the appeal the Fourth Circuit, for its part, plainly and squarely held that the District Court was required to limit its desegregation decree within the boundaries of the City of Richmond. One searches its opinion in vain for any suggestion that it did not think this was the issue before it—albeit couched somewhat hyperbolically in terms of "restructure . . . [of] internal government"—or that the Fourth Circuit would have countenanced any form of desegregation decree by the District Court that exceeded the Richmond city lines. Plainly it was the crossing of those lines, not the District Court's particular manner of crossing them, that the Court of Appeals condemned.

than that "degree of actual desegregation"[73] which the Constitution as construed in *Brown* (I) commands[74]—this

[73] *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 26 (1971).

[74] Throughout its opinion, the Court of Appeals repeatedly treats the District Court's decree as one designed to achieve "racial balance" rather than constitutionally-compelled desegregation. (See A. 562, 565, 567-70, 578-79, 580). Closely inspected, however, this does not mean what it appears to say. It does not mean either that the District Court undertook to pass beyond the pale of "constitutional violation" into the fields of "educational policy," *Swann*, 402 U.S., at 16, or that the District Court's decree in fact strayed into the educational-policy field.

If the Court of Appeals did think that the District Judge was proceeding on some theory of obligation or power to dictate a non-constitutionally-commanded "racial balance," then its discussion of state school division organization, Virginia's supposed law and tradition of local school administration, the Tenth Amendment, and about ninety-nine percent of its thirty-page opinion for reversal were unnecessary. Reversal was compelled by one sentence quoting *Swann* for the obvious proposition—which the District Court here manifestly understood—that "judicial powers may be exercised only on the basis of a constitutional violation." *Swann*, 402 U.S., at 16. The contradistinction between mere "racial imbalance" and "state-imposed segregation in violation of *Brown I*," *Swann*, 402 U.S., at 17-18, did not escape the District Judge, however; and the Court of Appeals could not conceivably have thought it did. From the inception of his opinion and throughout all that follows, Judge Merhige makes uncontestably clear what he is holding:

> "The Court concludes, in the context here presented, that the duty to take whatever steps are necessary to achieve the greatest possible degree of desegregation in formerly dual systems by the elimination of racially identifiable schools is not circumscribed by school division boundaries created and maintained by the cooperative efforts of local and central State officials. The Court also concludes that meaningful integration in a bi-racial community, as in the instant case, is essential to equality of education, and the failure to provide it is violative of the Constitution of the United States." (A. 185-86; 338 F. Supp., at 79-80.)

The Court of Appeals concedes that the District Court disclaimed any intention of imposing a "fixed racial quota" by its adoption of the Richmond School Board's desegregation plan. (A. 569-70.) But it concludes that "the adoption of the Richmond

is a fair summary of the Fourth Circuit's holding. Other themes are sounded in its opinion but, insofar as these

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Metropolitan Plan in toto by the district court, viewed in the light of the stated reasons for its adoption, is the equivalent, despite disclaimer, of the imposition of a fixed racial quota." (A. 570.) The key to this sentence is the Court of Appeals' own view of what the "adoption of the Richmond Metropolitan Plan in toto" implied: namely, that, insofar as the plan went beyond the Richmond city line, it went beyond the Constitution. For, apart from that view, it could not be said—and the Court of Appeals does not say—that the "use made of mathematical ratios [in the Metropolitan Plan] was . . . more than a starting point in the process of shaping a remedy," *Swann*, 402 U.S., at 25, or that the District Court required "as a matter of substantive constitutional right, any particular degree of racial balance or mixing," *id.*, at 24. To the contrary, the Metropolitan Plan (1) originated with the Richmond School Board, not the District Court, and was the only inter-division plan put before the Court (see note 72, *supra*); (2) began, and did not end, with mathematical ratios (A. 418-31; 338 F. Supp., at 186-191); (3) contemplated deviation from those ratios not only in proposed subdivision 6 (southern Chesterfield County) as a whole (A. 426; 338 F. Supp., at 189) but wherever else problems of practicality might arise (e.g., A. 424-25; 338 F. Supp., at 188); and (4) was embodied in a decree which the District Court said it stood ready to modify at any time (see note 72 *supra*), and whose modification it invited in the following unmistakable terms:

> "While the viable racial mix contemplated by the plan is educationally sound and would indeed result in a unitary system, variations from that suggested racial mix may be unavoidable. All parties are admonished that it is not the intention of the Court to require a particular degree of racial balance or mixing. If in the implementation of the plan improved modifications seem appropriate, the Court stands ready to entertain them." (A. 519-20; 338 F. Supp., at 230.)

On this record, then, the Court of Appeals' attribution of a "racial balance" order to the District Court is not explained by anything the District Court said or did. That attribution derives, rather, from the disagreement of the Court of Appeals with the District Court upon the one key issue in the case: the significance of school district lines as limits upon the federal courts' remedial obligation and power under *Brown* (II) and *Swann*. (See text, *infra*). Put simply, the Fourth Circuit took the view that school district lines marked the confines of *Brown*; that, once the maximum feasible desegregation that could be achieved without cross-

contribute to the result, they all boil down to the proposition that *Brown* (I) is to be applied only within the walls of individual school districts.[75] School district lines drawn

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ing those lines had been achieved, each individual district divided by the lines was "unitary" (see note 75, *infra*); and that, at that point "'state-imposed segregation . . . [had] been completely removed,' . . . [and] further intervention by the district court was neither necessary nor justifiable." (A. 581.) Since the District Judge persisted in intervening beyond this point, he must—in the Fourth Circuit's perception—have been trying to achieve "racial balance," not desegregation.

"Racial balance" is thus the Fourth Circuit's term for desegregation pushed too far; it is an appellate conclusion, not a description of what the trial court did; and there would be less accuracy in saying that the District Judge here was forbidden to cross school district lines because he sought "racial balance" than that he was found to have sought "racial balance" because he crossed forbidden school district lines. The critical question remains, as we next develop in the text, whether crossing lines is (as the Court of Appeals held) or is not (as the District Court held) forbidden.

[75] The Court of Appeals states this proposition in two principal ways, and suggests it in a third:

The first way begins with the Tenth Amendment premise that "[o]ne of the powers . . . reserved to the states is the power to structure their internal government" (A. 579), and proceeds to the conclusion that school district lines, as components of that structure, may not be breached by a federal court unless they have been "'used as an instrument for circumventing'" constitutional rights of racial equality (see A. 580). In this formulation, the Fourth Circuit apparently conceives an "instrument" as something "intended to circumvent" the Constitution (A. 580); hence it holds that the boundary lines of local governmental units are unalterable by a federal court seeking means to effect desegregation "absent invidious discrimination in the establishment or maintenance of . . . [those] units" (A. 562), or invidious "motivation" in the placement of the lines (see notes 76-79, *infra*). Related to this theory is the Court's statement that "[t]o approve the consolidation of these three school districts would require us to ignore the tradition and history of the Commonwealth of Virginia with respect to its establishment and operation of schools, as well as hold invalid various enactments of the Legislature of Virginia structuring Virginia's system of free public schools" (A. 575; see also A. 570-71, 575-78). Notably, the tradition and history of Virginia have been to prefer school segregation to local school district autonomy, while preferring local school district autonomy to desegregation. (See pp.

up pursuant to state law establish the absolute, unbudgeable outer limits of federal-court desegregation decrees, except where the federal court can find as a fact that the drawing of the lines was racially "motivated," [76] or

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5-14, *supra;* pp. 68-69, *infra*). And to break with this tradition by crossing school district lines for the purpose of desegregation, as the District Court did, does not require the invalidation of any Virginia statutes: it requires only recognition that, by reason of the Supremacy Clause, no Virginia statutes (whether or not they are otherwise valid) can confine the power of a federal court to "consider the use of all available techniques" for dismantling dual school systems, *Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 37 (1971). In this setting, the Fourth Circuit's invocation of Virginia tradition and law highlight the inflexible character of its Tenth Amendment holding.

Its second major way of asserting the inviolability of school district lines is to treat individual school districts, which concededly have long maintained the sort of dual school systems condemned by *Brown* (I), as becoming "unitary" and thus escaping the remedial powers of the federal courts under *Brown* (II), so soon as desegregation has been pursued to the fullest extent that it can be pursued within the separate boundaries of each district and without crossing district lines. (See A. 563, 564-65, 571-72, 580-81, 582-83.) Unless "there was ever joint interaction between any two of the units involved (or by higher state officers) for the purpose of keeping one unit relatively white by confining blacks to another" (A. 572), the units are to be viewed as watertight compartments for purposes of the application of both *Brown* (I) and *Brown* (II). (See A. 582-83.) The Fourth Circuit can find no such joint interaction in the case of Richmond, Chesterfield and Henrico (A. 572-74), in part because racial discrimination has been so pervasively practiced in all three that it could not have differentially driven blacks from one to the other (A. 573-74.)

Third, the Court of Appeals expresses concern over various practical problems that it perceives in the District Courts' inter-district desegregation plan (A. 566, 575-76,578-79), although it nowhere suggests that these problems approach the level of magnitude which would justify reversing a district judge's discretion under *Swann*. See 402 U.S., at 31. This is to say that the *Swann* principles are inapplicable across school district lines. See pp. 52-53 next following.

[76] "It is not contended . . . that the establishment of the school district lines more than 100 years ago was invidiously motivated. We have searched the 325-page opinion of the district court in vain for the slightest scintilla of evidence that the boundary lines of

"invidious," [77] or "intended" [78] or had the "purpose" [79] to segregate the public schools by race.

The precise nature of this holding appears starkly when the result that it ordains for Richmond-Chesterfield-Henrico is compared with the result approved for Charlotte-Mecklenburg by this Court in *Swann*.[80] If Virginia law had constituted Richmond and the two entirely surrounding counties as a single school district, in the way that North Carolina law includes the City of Charlotte and the County of Mecklenburg within a single district, there is not the faintest shadow of a doubt that the Fourth Circuit would have affirmed—and would have been required by *Swann* to affirm—the District Court's desegregation order here. This is to say that, notwithstanding the several different ways in which the Court of Appeals phrases its grounds for reversal,[81] each depends decisively upon the bedrock notion

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the three local governmental units have been maintained either long ago or recently for the purpose of perpetuating racial discrimination in the public schools." (A. 571.)

[77] ". . . [I]t is not established that the racial composition of the schools in the City of Richmond and the counties is the result of invidious state action." (A. 582-83; see also the paragraph quoted in text on p. 46, *supra*.

[78] "The facts of this case do not establish . . . that state establishment and maintenance of school districts coterminous with the political subdivisions of the City of Richmond and the Counties . . . have been intended to circumvent any federally protected right." (A. 580.)

[79] "But neither the record nor the opinion of the district court even suggests that there was ever joint interaction between any two of the units involved (or by higher state officers) for the purpose of keeping one unit relatively white by confining blacks to another." (A. 572; see also note 76 *supra*.)

[80] *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) [hereafter sometimes cited as *Swann*].

[81] These various phrasings and their relevance to the critical holding of the Court of Appeals are analyzed in notes 72-75, *supra*.

that school district lines confine a State's constitutional obligation under *Brown* (I) and the federal courts' remedial powers under *Brown* (II) and *Swann*.

The Fourth Circuit does not and could not hold either (A) that the Virginia schools within the Richmond-Chesterfield-Henrico area, *viewed without regard to the lines that subdivide this area into three school "divisions,"* are unitary,[82] or (B) that Judge Merhige's plan for converting the schools within the Richmond-Chesterfield-Henrico area "to a unitary system in which racial discrimination would be eliminated root and branch" [83] was, *without regard to the lines that subdivide this area into three school "divisions,"* an abuse of the "equitable remedial discretion of the District Court" [84] whose "breadth and flexibility" were confirmed in *Swann*.[85] Rather, it holds precisely that, because of those "division" lines, the District Court was powerless[86] to enter a decree which would otherwise have been unassailably proper.

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[82] The courts below and other lower courts use the term "unitary," as this Court did in *Green* v. *County School Bd.*, 391 U.S. 430, 438 (1968), and *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19, 20 (1969), to denote school systems that comply with the constitutional obligation of *Brown* (I).

[83] *Green* v. *County School Bd.*, 391 U.S. 430, 438 (1968).

[84] *Swann*, 402 U.S., at 25; see *id.*, at 15-16.

[85] 402 U.S., at 15; see *id.*, at 27.

[86] The Court of Appeals plainly did not hold merely that the location of school district lines was one important factor to be considered in devising the pupil-assignment phase of a desegregation plan, or that such lines should not be crossed without a finding their crossing was necessary for effective desegregation. Judge Merhige was palpably aware of both these points, and could not conceivably have been reversed on the theory that he ignored them. From first to last, the Fourth Circuit's opinion makes plain that it is concerned with the limits of power, not with those of discretion. (E.g., A. 562, 563, 579-83.)

There has been no blinking the consequences, as Mr. Justice Cadozo was wont to say. The Constitution may follow the flag, but not across a school district line. School district boundary lines, at least where they are not factually proved to have been drawn with racial discrimination in mind, fix categorically the outer limits of "the broad remedial powers of a court" [87] to desegregate the schools. The measure of a desegregation plan "is its effectiveness" [88] —right up to the school district line. At that point, its measure is the line, whether or not a single-district plan effectively desegregates. Because "[t]here is no universal answer to complex problems of desegregation," [89] federal district courts "may and should consider the use of all available techniques," [90] and the "flat" or the "absolute prohibition" of any useful technique is itself unconstitutional.[91] But these principles also run only to the school district line: federal equity is flatly and absolutely forbidden to cross that line itself.

B. *This Decision Critically Impairs the Powers of the Federal Courts to Do the Vital and Difficult Job of Desegregating the Schools of the Nation's Metropolitan Ghettos.*

The Fourth Circuit's categorical prohibition of desegregation orders crossing school district lines gravely imperils the ability of the federal courts to solve the country's most critical and intractable school desegregation problem: bringing *Brown* v. *Board of Education* to the metropolitan ghetto. The segregation and isolation of racially

[87] *Swann*, 402 U.S., at 27.

[88] *Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 37 (1971).

[89] *Green* v. *County School Bd.*, 391 U.S. 430, 430 (1968).

[90] *Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 37 (1971).

[91] *North Carolina State Bd. of Educ.* v. *Swann*, 402 U.S. 43, 46 (1971).

identifiable center-city schools in metropolitan regions, which is not merely persisting but actually increasing under the shelter of the artificial lines of school district boundaries, presents the challenge of the 1970's to the vitality of *Brown* (I) and *Brown* (II). It prolongs and proliferates the evils that *Brown* condemned; and it will prove to be essentially insoluble so long as school district lines are treated as legally sacrosanct.

Over the past three decades and today, one of the most profound among the forces changing the contours of American society has been and is increasng urbanization. North and South, the greatest growths in population have come in areas surrounding cities. Large cities have grown more numerous and larger. In part this tendency is reflected by the consistent addition to the roster of the Bureau of the Census of new Standard Metropolitan Statistical Areas (SMSA's), defined as counties containing at least one city of 50,000 or more inhabitants, together with those adjacent counties that are metropolitan in character and are integrated economically and socially with the county of the central city.[92] In part, the tendency is marked by increases in the populations of existing SMSA's.

For no population group is this increasing urbanization more pronounced than for America's blacks.[93] The disintegration of the traditional Southern rural economy that began at the time of the Great Depression has resulted in one of the greatest population movements in history as displaced agricultural workers have sought relief from

[92] See UNITED STATES BUREAU OF THE BUDGET, OFFICE OF STATISTICAL STANDARDS, STANDARD METROPOLITAN STATISTICAL AREAS (1967), which sets forth and develops these criteria.

[93] NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT (G.P.O. 1968 0-291-729) (1968) [hereafter cited as KERNER COMMISSION], 115-121, 215-216.

economic privation in the more industrial urban centers. Twenty million Americans have left the land and moved to urban areas since 1940, "marking it as one of the greatest mass dislocations in United States history and making it comparable to the movement of twenty-two million immigrants to American shores between 1890 and 1930, a period of four decades." [94]

Black Americans, as the most marginal element in the rural economy, have been disproportionately represented in this great migration.[95] They are now "more urbanized, and more metropolitan, than the white population." [96] Within metropolitan regions, they tend to occupy the center cities, while the whites inhabit the suburbs.[97] Indeed, metropolitan center cities have seen a net white population loss.[98] Yet this latter phenomenon—sometimes spoken of as "white outflow" [99] or "white flight"—appears less important than differential racial immigration to the center city and the suburbs, respectively, in producing the increasing racial separation that is characteristic of the metropolis:

> . . . Between 1940 and 1960 the total population of metropolitan areas increased by 40 million persons. Eighty-four percent of the Negro increase occurred in the central cities and 80 percent of the white increase in the suburbs. Btween 1950 and 1960 the suburbaniza-

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[94] Piven & Cloward, REGULATING THE POOR 214 (1971).

[95] *Ibid.*

[96] KERNER COMMISSION 118.

[97] *Id.*, at 118-120.

[98] *Ibid.*

[99] *Id.*, at 119.

tion of whites accelerated: nearly 90 percent of their metropolitan increase occurred in the suburbs.

. . .

School-age children in metropolitan areas also reflect these trends. Between 1950 and 1960, the school-age population of the Nation's 24 largest metropolitan areas—which today contain almost two-thirds of the Nation's urban school-age population—increased by 5 million. Almost 90 percent of the nonwhite increase occurred in the central cities; more than 80 percent of the white increase was in the suburbs. By 1960, four out of five nonwhite metropolitan children of school age lived in central cities, while nearly three-fifths of the white children lived in the suburbs.

. . .

The rich variety of the Nation's urban population is being separated into distinct groups, living increasingly in isolation from each other. In metropolitan areas there is a growing separation between the poor and the affluent, between the well educated and the poorly educated, between Negroes and Whites. The racial, economic and social stratification of cities and suburbs is reflected in similar stratification in city and suburban school districts.[100]

The Richmond SMSA, and the three units of that area which are the principals in this present case—the City of Richmond, Chesterfield County, and Henrico County—exemplify these demographic developments, as illustrated by the following table:

[100] 1 UNITED STATES COMMISSION ON CIVIL RIGHTS, REPORT: RACIAL ISOLATION IN THE PUBLIC SCHOOLS (G.P.O. 1967 0-243-637) 1967) [hereafter cited as Civil Rights Commission], 11-12, 17.

POPULATION WITHIN THE RICHMOND SMSA[101]

	1950		1960		1970	
	population	*% non-white*	*population*	*% non-white*	*population*	*% non-white*
Richmond	230,310	31.7	219,958	42.0	249,430[102]	42.4
Chesterfield	40,400	20.9	71,197	13.3	77,046[102]	11.5
Henrico	57,340	9.9	117,339	5.2	154,364	6.8

The same patterns appear in metropolitan areas across the Nation. Consider the 1960-1970 figures for the following SMSA's:

POPULATION CHANGE FOR WHITE AND BLACK POPULATION IN SELECTED METROPOLITAN AREAS OF 500,000 OR MORE, BY CENTRAL CITY AND RING—1960 TO 1970[103]

SMSA, central city and ring	*Percent of population white*		*Percent of population black*	
	1960	*1970*	*1960*	*1970*
NORTHERN CITIES				
New York	88.0	82.0	11.5	16.3
Central city	85.3	76.6	14.0	21.2
Suburbs	95.0	93.6	4.8	5.9
Detroit, Mich.	84.9	81.4	14.9	18.0
Central city	70.8	55.5	28.9	43.7
Suburbs	96.2	96.0	3.7	3.6

[101] Sources: UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, II CENSUS OF POPULATION: 1950 (G.P.O. 1952), 46-29, 46-30; UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, I CENSUS OF POPULATION: 1960 (G.P.O. 1961), 48-28; UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, CENSUS OF POPULATION: 1970 (G.P.O. PC (1)-B48, Oct. 1971), 48-42 (correction page), 48-44.

[102] The Richmond and Chesterfield figures for 1970 are affected by Richmond's annexation, on January 1, 1970, of an area of Chesterfield County containing 47,262 persons, 97% white. Without that annexation, the differential population growth and racial change trends shown by the table would be even more marked.

[103] *Hearings Before the Senate Select Committee on Equal Educational Opportunity, 92nd Cong., 1st Sess., on Equal Educational Opportunity, Part 21,* Metropolitan Aspects of Educational Inequality (Nov. 22, 23, 30, 1971), 10913.

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SMSA, central city and ring	*Percent of population white*		*Percent of population black*	
	1960	*1970*	*1960*	*1970*
NORTHERN CITIES				
Chicago, Ill.	85.2	81.3	14.3	17.6
Central city	76.4	65.6	22.9	32.7
Suburbs	96.9	96.0	2.9	3.5
Philadelphia, Pa.	84.3	81.9	15.5	17.5
Central city	73.2	65.6	26.4	33.6
Suburbs	93.8	92.9	6.1	6.6
San Francisco-Oakland, Calif.	87.5	82.8	8.5	10.6
San Francisco	79.0	74.1	10.0	13.4
Oakland		59.1	22.8	34.5
Suburbs	93.7	91.0	4.4	5.4
Baltimore, Md.	78.3	75.8	21.4	23.7
Central city	65.1	53.0	34.7	46.4
Suburbs	92.8	93.5	7.0	6.0
Washington, D.C.	75.5	74.3	23.9	24.6
Central city	45.6	27.6	53.9	71.1
Suburbs	93.3	91.0	6.3	7.9
SOUTHERN CITIES				
Atlanta, Ga.	77.2	77.4	22.8	22.3
Central city	61.8	48.5	38.3	51.3
Suburbs	91.3	93.6	8.5	6.2
Houston, Tex.	80.3	79.9	19.5	19.3
Central city	76.9	73.3	22.9	25.7
Suburbs	86.9	90.7	12.9	8.8
New Orleans, La.	69.1	68.6	30.6	31.0
Central city	62.6	54.5	37.2	45.0
Suburbs	83.9	87.2	15.9	12.5

These raw population figures, moreover, significantly underreport the percentages of black students in the center-city metropolitan schools. Black school population ratios consistently run ahead of black total population ratios for several reasons: the fact that the black population is relatively younger than the white, and has more school-age children;[104] the fact that whites, far more frequently than

[104] KERNER COMMISSION 240.

blacks, can afford and choose private schools;[165] and the fact that "[p]eople gravitate toward school facilities"[166] to the extent that they are mobile, so that many middle-class whites who have or expect children gravitate toward the suburban schools.[167] Thus, Richmond's public school population was 69 percent black in 1971 (A. 521; 338 F. Supp., at 231); and blacks comprise the following percentages of the public school population, according to the latest available figures, in the several SMSA's whose total black-white population ratios are set forth immediately above: New York, 34.5%; Detroit, 63.8%; Chicago, 54.8%; Philadelphia, 60.5%; San Francisco, 28.5%; Oakland, 56.9%; Baltimore, 67.1%; Washington, D.C., 94.6%; Atlanta, 68.7%; Houston, 35.6%; New Orleans, 69.5%.[168]

Thus, a considerable number of our great central cities are increasingly becoming black enclaves, readily identifiable as such, surrounded by white suburbs. It is impossible to say, of course, without detailed judicial investigation, how many of these cities represent dual school systems within the prohibition of *Brown* (I).[169] Nonetheless, the

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[165] *Id.*, at 237.

[166] *Swann*, 402 U.S., at 20.

[167] KERNER COMMISSION 119.

[168] These figures, compiled by the Department of Health, Education and Welfare, appear in 117 Cong. Rec. S17516-S17518 (daily ed., Nov. 3, 1971).

[169] After suggesting that "the root causes of the concentration of blacks in the inner cities of America are simply not known" (A. 574-75), the Court of Appeals below speculated that "the forces influencing demographic patterns in New York, Chicago, Detroit, Los Angeles, Atlanta and other metropolitan areas have operated in the same way in the Richmond metropolitan area to produce the same result. . . . Whatever the basic causes, it has not been school assignments, and school assignments cannot reverse the trend." (A. 575.) Cases coming from these other cities, we respectfully suggest, must await examination on their own records. But it is interesting to note that, insofar as the cities mentioned have come

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total number of black children consigned to schooling in racially identifiable schools within such systems today, and who therefore face a future of unconstitutional segregated education isolated from their white suburban counterparts, must be of enormous magnitude by any calculation.

If all of these children were so fortunate as to live in cities which, by the happenstance of state law, were organized together with their white surrounding metropolitan suburbs into single school districts, they should yet have the benefits of *Brown*. This is exactly what *Swann* v. *Charlotte-Mecklenburg Board of Education* promises. But, unlike Charlotte-Mecklenburg, many metropolitan areas do not constitute single school districts. To the contrary, the 227 SMSA's recognized in the United States as of 1967[110] had among them 5018 separate, independent school districts, in addition to 511 dependent school systems, an average of more than twenty-five apiece.[111] This total, it is true, has been sharply decreasing[112] as more and more metropolitan entities recognize the educational advantages of consolidation. Not the least pernicious feature of the Court

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under careful judicial scrutiny, courts conversant with the relevant facts have found unconstitutional school segregation. *United States* v. *School District No. 151*, 286 F. Supp. 786 (N.D. Ill. 1968), *aff'd*, 404 F.2d 1125 (7th Cir. 1968), *on remand*, 301 Supp. 201 (N.D. Ill. 1968) (area of Chicago SMSA); *Bradley* v. *Milliken*, 338 F. Supp. 582 (E.D. Mich. 1971), *subsequent history*, see n. 122, *infra* (Detroit); *Crawford* v. *Board of Education*, Super. Ct., L.A. Cty., No. 822-854, opinion of February 11, 1970 (Los Angeles) (appeal pending); *Spangler* v. *Pasadena City Board of Education*, 311 F. Supp. 501 (C.D. Cal. 1970), *order denying intervention of additional parties aff'd*, 427 F.2d 1352 (9th Cir. 1970) (area of Los Angeles (SMSA); *e.g.*, *Calhoun* v. *Cook*, 451 F.2d 583 (5th Cir. 1971) (Atlanta).

[110] This excludes the SMSA's of Puerto Rico but includes Hawaii's.

[111] UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, 5 CENSUS OF GOVERNMENTS: 1967 (1968), 1.

[112] *Ibid.*

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of Appeals' decision below is the incentive that it offers to the suburbs to resist this development.

In the context of American urban living patterns as they now are and are increasingly becoming—of our black cities and our white suburbs—school district lines frequently function as walls of separation of the races. Their contribution to black isolation in the center city metropolitan schools has been recognized;[112] and some at least of these metropolitan school systems "appear to be completely b ond hope of meaningful desegregation, absent some dramatic change in their boundaries."[114] This is certainly not to say that, in every multi-district metropolitan region where unconstitutional racial segregation is judicially found to be persisting in violation of *Brown* (I), a desegregation plan that crosses the district lines—still less, any particular form of inter-district desegregation plan—should be required. It is to say that, in such areas, inter-district plans must be among the "available techniques"[115] that the federal district courts can consider in the exercise of their discretion, if they are to meet the obligation of *Brown* (II) and *Swann* to devise desegregation decrees that will "work"[116] in the Nation's cities.

By categorically denying federal judicial power to cross school district lines, even where the most compelling needs and "practicalities"[117] of desegregation make that course necessary and proper, the Fourth Circuit's judgment here

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[112] Civil Rights Commission 17-18.

[114] *United States* v. *Board of School Commissioners*, 332 F. Supp. 655, 677 (S.D. Ind. 1971).

[115] *Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 37 (1971); see also *North Carolina State Bd. of Educ.* v. *Swann*, 402 U.S. 43, 46 (1971).

[116] *Green* v. *County School Board*, 391 U.S. 430, 439 (1968).

[117] *Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 37 (1971).

equally categorically denies the hope of *Brown* to the black children of "these cities, [where] solutions not involving suburban participation no longer are possible." [118] That is a tragic enough result, but far more tragic in its consequences: the acceleration of the movement deplored by the Kerner Commission, "toward two societies, one black, one white—separate and unequal." [119, 120]

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[118] CIVIL RIGHTS COMMISSION 154.

[119] KERNER COMMISSION 1.

[120] We need hardly add that, although its implications are nationwide, a rule fixing territorial limits to *Brown* will provide especial comfort in those States and cities where, during eighteen years, every conceivable device of "[d]eliberate resistance" and "dilatory tactics," *Swann*, 402 U.S., at 13, has been opposed to desegregation with seemingly tireless energy. By promising whites safe haven behind school district lines, the Fourth Circuit's decision will unquestionably encourage them to seek such havens out and, once there, to employ every public and private means at their disposal to keep them as white as possible. Some of these means (such as rejection of school district consolidation proposals, of public housing projects, of zoning variances for uses threatening to attract black employees) are essentially undetectable; others (such as inflation of property values by the premium paid to purchase the assurance of all-white schools) are innately uncorrectable; still others (such as intimidation of prospective black occupants) are correctable in theory but not in fact. It is one thing, as this Court said in *Swann*, 402 U.S., at 22, not to load a school case with more baggage than it can carry; but it is quite another, as the Fourth Circuit has done here, in deciding a school case, to throw the baggage out in the road where it will foreseeably cause these sorts of "accidents."

II.

Questions Raised by the Fourth Circuit's Decision Require Authoritative Resolution By This Court, for the Guidance of the Lower Courts in Numerous Cases.

A. *The Decision Conflicts With Decisions in Other Circuits.*

The Fourth Circuit's holding that federal desegregation decrees may not cross school district boundary lines, absent a showing that the lines were drawn for discriminatory motives, conflicts with decisions of the Fifth Circuit[121] and of a district court in the Sixth,[122] and is inconsistent, at the least, with the approach taken to a multi-district case by the

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[121] In *Calhoun* v. *Cook*, 332 F. Supp. 804 (N.D. Ga. 1971), the district court made slight amendments to earlier orders that had been put into effect regarding the Atlanta school system, and then provided that, after six months, a final order would enter declaring the Atlanta system unitary and dismissing the lawsuit. In a "Comment," it suggested that school officials and others might well undertake voluntarily to investigate the possibility of consolidating the Atlanta school system with that of surrounding Fulton County. *Id.*, at 809-810. On appeal taken by the plaintiffs, the Fifth Circuit reversed and ordered, *inter alia*, that the district court "consider and make supplementary findings of fact and conclusions of law on the wide range reevaluation of the Atlanta school system described in the . . . 'Comment'." *Calhoun* v. *Cook*, 451 F.2d 583 (5th Cir. 1971).

[122] Following its opinion in *Bradley* v. *Milliken*, 338 F. Supp. 582 (E.D. Mich. 1971), the district court held extended hearings upon the legality and propriety of its granting relief that extended beyond the confines of the Detroit school district. By opinions and orders of March 24 and 28, June 14 and July 11, 1972, it concluded that inter-district relief in the form of a Detroit-area metropolitan plan was lawful and appropriate, and it decreed such a plan. *Bradley* v. *Milliken*, U.S.D.C., E.D. Mich., C.A. No. 35257. The defendants have appealed, and the appeal is presently pending *sub nom. Bradley* v. *Milliken*, 6th Cir., No. 72-8002. Oral argument has been had, and the case is submitted for decision.

Eighth Circuit.[123] Its discovery that the Tenth Amendment constitutes an outright bar against the prudential use of school district consolidation as a desegregation tool casts into doubt, more generally, the developing line of cases that have found no such doctrinal impediment to ordering consolidation where factually appropriate in a variety of situations.[124]

B. *The Decision Has Immediate Implications for the Efficient Conduct of Litigation Pending in Seven Circuits.*

The impact of a decision which curtails this developing body of remedial law in the abrupt fashion of the Fourth Circuit here will be both widespread and immediate. School cases seeking metropolitan desegregation by means of multi-district plans are presently pending in the district courts of at least six circuits in addition to the Fourth: hearings on metropolitan-area relief have been ordered in Indianap-

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[123] The extent to which the decision below conflicts with *Haney* v. *County Bd. of Educ.*, 410 F.2d 920 (8th Cir. 1969), *subsequent history in* 429 F.2d 364 (8th Cir. 1970), depends upon the meaning of the "invidious motivation" test coined by the Fourth Circuit. Whether or not it would reach the facts of *Haney* is uncertain. What is certain is that the Eighth Circuit itself eschewed a test of "intentional gerrymandering of district lines for racial reasons," 410 F.2d, at 924, which is apparently what the Fourth Circuit's test amounts to.

[124] *Taylor* v. *Coahoma County School Dist.*, 330 F. Supp. 174 (N.D. Miss. 1970-1971), *aff'd*, 444 F.2d 221 (5th Cir. 1971); *United States* v. *Texas*, 321 F. Supp. 1043 (E.D. Tex. 1970), 330 F. Supp. 235 (E.D. Tex. 1971), *modified and aff'd*, 447 F.2d 441 (5th Cir. 1971); *Lee* v. *Macon County Bd. of Educ.*, 448 F.2d 746 (5th Cir. 1971), 455 F.2d 978 (5th Cir. 1972). Pairing of schools across school district lines was also ordered in *Robinson* v. *Shelby County Bd. of Educ.*, 330 F. Supp. 837 (W.D. Tenn. 1971), *order aff'd*, 6th Cir., No. 71-1966 (Sept. 21, 1972).

olis,[125] and complaints seeking such relief are under consideration in numerous other cities.[126] If the Fourth Circuit decision below is correct, these litigations should be radically reshaped: if it is incorrect, they should be taken out of its shadow; and, in either event, they should not be confused and delayed by disputes about its correctness and meaning which this Court could authoritatively set to rest.

Metropolitan desegregation, long overdue, is now proceeding apace. But following the decision below, its effective progress urgently requires guidance that only this Court can provide.

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[125] *United States* v. *Board of School Comm'rs*, 332 F. Supp. 655 (S.D. Ind. 1971), *mandamus denied*, 7th Cir., No. 72-1063 (Feb. 2, 1972), *cert. denied*, 32 L.ed.2d 805 (1972).

[126] *E.g.*, *Morgan* v. *Hennigan*, D. Mass., Civ. No. 72-911-G (Boston); *Lumpkin* v. *Dempsey*, D. Conn., Civ. No. 13,716 (Hartford) (motion to dismiss denied by order of January 22, 1971, Smith, C.J., and Blumenfeld and Clairie, JJ.); *Arthur* v. *Nyquist*, W.D. N.Y., Civ. No. 1972-325 (Buffalo); *Evans* v. *Buchanan*, D. Del., Civ. No. 1816 (Wilmington); *Wheeler* v. *Durham City Bd. of Educ.*, M.D.N.C., Civ. No. C-54-D-60 (Durham); *Calhoun* v. *Cook*, N.D. Ga., Civ. No. 6298 (Atlanta) (supplemental and amended complaint seeking metropolitan relief filed after remand by the Fifth Circuit, note 121 *supra*); *Haycraft* v. *Bd. of Educ.*, W.D. Ky., Civ. No. 7291-G (Louisville); *Higgins* v. *Grand Rapids Bd. of Educ.*, W.D. Mich., Civ. No. 6389 (Grand Rapids); *Brinkman* v. *Gilligan*, S.D. Ohio, Civ. No. 72-137 (Dayton). See generally *Note, Merging Urban and Suburban School Systems*, 60 GEO. L. J. 1279 (1972).

III.

This Case Presents an Excellent Opportunity for the Court to Consider, and to Guide the Lower Courts in Consideration of, the Question of Multi-District Desegregation Decrees in the Metropolitan Context.

Several features make this Richmond case especially opportune as a vehicle for the Court's initial consideration of the propriety of multi-district metropolitan desegregation plans. The Fourth Circuit's decision turns upon a sharply focused issue of constitutional law, unobscured by significant factual controversies or by debatable judgments relating to the exercise of equitable discretion under *Swann* and the scope of its appellate review. (Part I(A), *supra.*) The legal issue is pivotal: it emerges against the background of the familiar history of public school segregation in Virginia with which this Court has dealt many times between *Brown* (I) and *Wright* v. *Council of the City of Emporia*,[127] and it stands at the threshold of the problems of effective metropolitan desegregation. Its resolution in this case is not complicated by state-law problems, since Virginia law provides all the means of implementation of the inter-district plan decreed by the District Court. (A. 195, 538-40; 338 F. Supp. at 84, 245-246.)[128] Nor is it compli-

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[127] 33 L.ed.2d 51 (1972). See note 2 *supra.*

[128] The Court of Appeals is simply wrong that "[t]o approve the consolidation of these three school districts would require us to . . . hold invalid various enactments of the Legislature of Virginia structuring Virginia's system of free public schools" (A. 575). The consolidation ordered by the District Court is entirely consonant with Virginia law allowing and providing detailed mechanisms for the consolidation of school districts, except on one single point. That point is the provision of Va. Code §22-30, "enacted since the joinder of state and county defendants in this case" (A. 228; 338 F. Supp., at 99), which prohibits the State Board of Education

cated by the presence of an excessive number of school districts: only three are involved.

It is no accident, moreover, that the Fourth Circuit laid its decision upon the broad legal ground of the Tenth Amendment. For if federal judicial power to cross school district lines in fashioning desegregation decrees exists in any situation short of active, "intentional gerry-mandering of district lines for racial reasons," [129] the Richmond Virginia situation presents an extreme case calling for the exercise of that power. This is so for several reasons:

(A) As we have pointed out at pp. 5-13, 20, *supra*, Virginia's school district lines which are now erected as insurmountable barriers against desegregation have historically "been ignored when necessary to serve public educational policies, including segregation." (A. 257; 338 F. Supp., at 113; see also A. 193, 231, 352-64; 338 F. Supp., at 83, 100, 155-161.) They "have never been obstacles for the travel of pupils under various schemes, some of them centrally administered, some of them overtly intended to promote the dual system." (A. 193; 338 F. Supp., at 83.)

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from creating school districts composed of more than a single city or county without consent of the local school boards and governing bodies. This provision does not oppose any obstacle to the District Court's decree except the obstacle that is instinct in any situation where a judicial decree is called for—the unwillingness of the party against whom the decree runs to do what it compels without its compulsion. It need not be held "invalid" for the obvious reason that, whether valid or invalid, it cannot trammel the power of a federal court of equity, see, e.g., *Haney* v. *County Bd. of Educ.*, 429 F.2d 364, 368-369 (8th Cir. 1970); but to the extent that this latter proposition amounts to a narrow ground of "invalidation" of the provision as applied under the Supremacy Clause, that is no novel or troublesome result. *North Carolina State Bd. of Educ.* v. *Swann*, 402 U.S. 43 (1971).

[129] *Haney* v. *County Bd. of Educ.*, 410 F.2d 920, 924 (8th Cir. 1969).

Not only have children been assigned to schools across those lines—most notably, black children sent to black schools pursuant to the policy of *apartheid*—(*ibid.*), but the entire structure of local school-district autonomy was promptly scrapped in the first throes of Virigina's massive resistance to *Brown* (I), and thereafter reassumed subject to various segregatory exceptions such as tuition grants (see pp. 6-13, *supra;* A. 194, 212-20, 271-81, 313-31; 338 F. Supp., at 84, 92-95, 119-123, 138-146). Apart from the obvious point that "[b]arriers which did not prevent enforced segregation in the past [should] . . . not be held to prevent conversion to a full unitary sustem," [130] this history amply supports the District Court's finding that the present resistance to an inter-district desegregation plan has little to do with concerns about local government, but is "racially based." [131]

(B) Both courts below were thoroughly agreed that within the school district boundary lines of the City of Richmond, nothing more can be done than has already been done to "disestablish . . . the formerly state-imposed dual school system." (A. 563.) This finding is at once the basis upon which the District Court concluded that a metropolitan school desegregation plan was factually neces-

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[130] *Henry* v. *Clarksdale Municipal Separate School Dist.*, 433 F.2d 387, 394 (5th Cir. 1970).

[131] "Considering the historic flexibility of political subdivisions in the state and in this area in matters of pupil exchange across political boundaries and in the cooperative operation of other public utilities, in view of the several statutory patterns—part of the public policy of the state—under which cooperative ventures can be undertaken, and in view of the fact that school operation in the counties has always entailed transportation times and distances similar to those involved in the suggested metropolitan plan, resistance to the proposal appears clearly to be racially based." (A. 231; 338 F. Supp., at 100.)

sary,[132] and the basis upon which the Court of Appeals conversely concluded that the Richmond school system was legally "unitary" (A. 563, 571-72). But it is also undisputed and indisputable that this "unitary" system consists of a black island in a white sea. (See pp. 34-35, *supra*.) Richmond, containing a school population that is 69% black[133] (with one-fifth of its schools ranging from 80% to 89% black) (A. 530-32; 338 F. Supp., at 240-242), is entirely surrounded by two counties whose school population is 91% white.[134] As between Richmond and the counties, "great disparities in 1971 racial composition . . . [make] both individual facilities and entire systems racially identifiable." (A. 186; 338 F. Supp., at 80.)

Black Richmond schools and white county school lie virtually on top of one another. Richmond's 78% black John Marshall High School is 1.4 miles (eight blocks) from the 96.1% white Henrico High School; Richmond's 85% black Highland Park School is 1.3 miles from Henrico's 99.8% white Glen Lea School; and the District Court's opinion identifies nine other "schools of extremely divergent racial composition . . . located a very short distance apart" (A. 428; 338 F. Supp., at 190) across the school district lines. It is little wonder that an expert witness for the county and state defendants "conceded that a child, observ-

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[132] ". . . [T]he 'desegregation' of schools within the city and the counties separately is pathetically incomplete. Not only is the elimination of racially identifiable facilities impossible of attainment, but the partial efforts taken contain the seeds of their own frustration." (A. 237; 338 F. Supp., at 103; see also, A. 230; 338 F. Supp., at 100.)

[133] For the 1971-1972 school year, 13,500 white students and 29,747 black students were enrolled in the Richmond schools. (A. 417; 338 F. Supp., at 185.)

[134] In 1971-1972, Henrico enrolled 31,299 white students and 3,018 black students, while Chesterfield enrolled 21,588 white students and 2,166 black students. (A. 417-18; 338 F. Supp., at 185.)

ng two schools on different sides of a jurisdictional boundary, with widely disparate racial compositions, would not be sufficiently sophisticated to know most of the forces and factors which brought forth such racial composition, but would simply perceive the existence of black and white schools." (A. 451; 338 F. Supp., at 200.)

In addition, the black Richmond schools are growing blacker: during the 1970-71 and 1971-72 sessions, "Richmond schools lost over 7,800 white students from their projected figure [i.e., the figure envisaged in the District Court's interim Richmond-only desegregation plan]" (A. 417; 338 F. Supp., at 185). This loss of "39% of its white students in the past two years" (A. 237; 338 F. Supp., at 203), was a significant consideration in the District Judge's finding that any attempts to desegregate Richmond schools within the closed confines of the Richmond school district would "contain the seeds of their own frustration" (see note 132, *supra*).

(C) The Greater Richmond region is the archetype of a metropolitan area wherein school district boundary lines coincide with no tangible obstacles and are unrelated to any administrative or educational needs" (A. 193; 338 F. Supp., at 83). The District Court's opinion makes detailed findings of fact about the region (A. 401-16; 338 F. Supp., at 178-184) which compel the conclusion—unquestioned by the Court of Appeals—that the City of Richmond and its two surrounding counties are entirely integrated in every dimension but race. (See pp. 15-18, *supra*.)

We have previously mentioned the measure of integration used by the Census Bureau in its definition of Standard Metropolitan Statistical Areas.[135] For that purpose, a county would be regarded as integrated with a central city

[135] See text at note 92 *supra*.

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if 15% of the workers living in the county worked in the city.[126] By contrast, 48% of Chesterfield's almost 30,000 workers work in Richmond, 30% work in their home county, 6% work in Henrico. Among Henrico's nearly 70,000 workers, 65% work in Richmond, 27% work at home, 3% work in Chesterfield.[127]

Richmond is a magnet for the counties' shoppers as well as its workers. The city's total population is 249,430; Chesterfield's is 77,046; Henrico's is 154,364.[128] But Richmond is responsible for $698,123,000 in retail trade as compared to $89,226,000 in Chesterfield and $186,021,000 in Henrico. The disposition is even sharper in regard to "shopping goods"—those purchased from department and apparel stores and thus comprising routine consumer items. Richmond accounts for $213,671,000 of such purchases, five times the amount of Henrico's $39,253,000 and almost seventeen times Chesterfield's $12,704,000.[129]

Newspapers are a good index of the independent identity of subparts of a region, because they are relatively inexpensive to establish (less expensive, for example, than

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[126] *Op. cit. supra*, note 92, at 2. This is an application rather than a paraphrase of the Census Bureau's definition.

[127] UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, CENSUS TRACTS, CENSUS OF POPULATION AND HOUSING, *Richmond, Va., SMSA* (PHC(1)-173) (1972), P-11, Table P-2, Social Characteristics of the Population: 1970) (these figures omit workers whose place of work is unreported). Throughout this section of the Petition, we shall use the latest figures available from judicially noticeable sources. They update the figures available at the time of trial (set forth at pp. 16-17, *supra*), and have the added virtue that they were compiled following the 1970 annexation of a portion of Chesterfield County by the City of Richmond (note 102, *supra*; see A. 406-10; 338 F. Supp., at 180-182).

[128] See chart at note 101, *supra*.

[129] RAND, MCNALLY & CO., [1972] COMMERCIAL ATLAS & MARKETING GUIDE 76. Compare A. 402, 411; 338 F. Supp., at 178, 182.

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television stations—all six of which in the Richmond SMSA are located in Richmond City), and are directly responsive to the demand of the local populace for news about their neighbors, about local political issues, and about the doings in the community as that is perceived by its inhabitants. Henrico County apparently has no newspapers; Chesterfield has only one: —a weekly published in Chester, which is a town of about 5,500 residents. The Richmond newspapers therefore serve the counties. There are an estimated 83,100 households in Richmond City, and 74,200 in the counties;[140] Richmond's morning *Times-Dispatch* has a daily circulation of 140,618 and a Sunday circulation of 193,540; Richmond's evening *News-Leader* has a circulation of 118,410.[141]

In addition, of the eighteen hospitals in the area, seventeen are located in Richmond. The principal cultural centers—libraries, museums, colleges—are located in Richmond. Public transportation is deployed, for the most part, to service city-county travel rather than intra-county travel.[142]

The pattern of life in the area, the context within which the public schools are seen as racially identifiable or not, is therefore this: Residents of Chesterfield and Henrico Counties—together with those of the City of Richmond—are generally born in Richmond; they shop in Richmond; they travel to Richmond for intellectual and cultural stimulation; they depend upon the Richmond papers for their "local" news; they work in Richmond (more than in their counties of residence); and, assuming that death occurs in a hospital, they die in Richmond. But they do not go to

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[140] *Op. cit. supra*, note 77, at 76 (estimated as of January 1, 1972).

[141] [1972] AYER DIRECTORY OF PUBLICATIONS 1084, 1122.

[142] See note 28, *supra*.

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school with Richmond's blacks. The black Richmond child who (according to defendants' expert witness) lacks the sophistication to perceive why this is so may perhaps be forgiven his unperceptiveness. What he fails to see has all the transparency of the Emperor's clothes.

IV.

The Fourth Circuit's Decision Departs From Settled Principles and Calls Into Question Doctrines That Are Indispensable Safeguards of the Right of Racial Equality.

In its result and its reasoning, the decision below constitutes a dangerous departure from essential substantive and remedial principles developed by this Court to protect the constitutional right of racial equality.

A. *The Decision, Focusing Only Upon Individual School Districts, Ignores the Affirmative Obligation of the State to Comply With the Commands of the Fourteenth Amendment and of* Brown v. Board of Education.

The Fourth Circuit comes at this case as though the Fourteenth Amendment and *Brown* (I) spoke severally to the individual school districts in the State of Virginia, rather than to the State itself. Conceding that each of the districts of Richmond, Chesterfield and Henrico long maintained dual school systems, it inquires whether each has made its separate peace with the Constitution. Because each has done all that it can do within its own boundaries, the Constitution is satisfied. Schools that were built to be or became black schools before *Brown* and during seventeen years of recalcitrance thereafter may remain black schools; previously white schools may remain white schools; so long as the black schools and the white schools are a mile and a half apart on either side of a school district line,

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no one is responsible. The State of Virginia is not responsible, because—having chosen to assert its prerogative powers only in support of segregation (see pp. 6-14, *supra*) —it now chooses to take no further action.

This view, we think, cannot be squared with authority or reason, with the premises of the Fourteenth Amendment or the promises of *Brown*. To be sure, the named party-defendants in the *Brown* cases were local school systems within the States of Virginia, Kansas, South Carolina and Delaware; but they were not constitutional independent contractors. Each was operating its schools under the segregatory compulsion of state law, and the meaning of *Brown* (I) was to declare those state laws—and every aspect of the dual systems emanating from them—unconstitutional. As Judge Wisdom put it in *United States* v. *Jefferson County Bd. of Educ.*, 372 F.2d 836, 847 (5th Cir. 1966), *aff'd en banc*, 380 F.2d 385 (5th Cir. 1967): "The two Brown decisions . . . compelled seventeen states, which by law had segregated public schools, to take affirmative action to reorganize their schools into a unitary, non-racial system." If the *Brown* decisions themselves left any doubt of this, *Cooper* v. *Aaron*, 358 U.S. 1 (1958), did not. "State authorities were thus duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system." *Id.*, at 7.

Two principles are essential here. The first is that "[t]he fundamental guarantee of equal treatment at the hands of the State cannot be thwarted by the fragmentation of decisionmaking." [143] "The United States Constitution recognizes no governing unit except the federal government

[143] Brief for the United States as *Amicus Curiae*, in *Griffin* v. *County School Bd.*, 377 U.S. 218 (1964) (O.T. 1963, No. 592), p. 20.

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and the state." [144] For the long-time growth of racially identifiable black schools within the City of Richmond, it is the State of Virginia, not Richmond alone, that must answer to the Constitution. And its answer cannot be that Richmond is an island, any more than that Prince Edward County[145] or Emporia[146] was.

The second principle is that "[t]he affirmative obligation to seek means of disestablishing state-imposed segregation must be shared by all agencies, or agents of the state . . . who are charged by law with, and who exercise, official public school functions." [147] That principle unquestionably reaches both the state and the county defendants here. For many years, they had been participants in the dual system that the District Court sought to end. If affirmative acts, the discharge of affirmative obligations, was necessary by them to disestablish the dual system, the District Court could command them to act.

The Fourth Circuit ignores these principles when it rules that a school district which "belatedly . . . has . . . done all it can to disestablish to the maximum extent possible the formerly state-imposed dual school system within its municipal boundary" thereby becomes "unitary." (A. 563.) This conception supposes, as Judge Winter's dissent below

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[144] *Hall* v. *St. Helena Parish School Bd.*, 197 F. Supp. 649, 658 (E.D. La. 1961) (three-judge court), *aff'd*, 368 U.S. 515 (1962).

[145] *Griffin* v. *County School Bd.*, 377 U.S. 218 (1964).

[146] *Wright* v. *Council of the City of Emporia*, 33 L.ed.2d 51 (1972).

[147] *Franklin* v. *Quitman County Bd. of Educ.*, 288 F. Supp. 509, 519 (N.D. Miss. 1968). *Accord: Lee* v. *Macon County Bd. of Educ.*, 267 F. Supp. 458, 478-479 (M.D. Ala. 1967) (three judge court), *aff'd sub nom. Wallace* v. *United States*, 389 U.S. 215 (1967); *United States* v. *Texas*, 321 F. Supp. 1043, 1056-1057 (E.D. Tex. 1970), 330 F. Supp. 235 (E.D. Tex. 1971), *modified and aff'd*, 447 F.2d 441 (5th Cir. 1971).

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puts it, that "each political subdivision is free to operate in its own orbit" (A. 595); that neither is a school district obliged to look beyond its own boundaries for available and practicable desegregation techniques, nor is the State obliged to assist it to find them. We suggest, however, that *Brown* clearly implies such obligations.

Within a district, the obligation of *Brown* is to "consider the use of all available techniques including restructuring of attendance zones," with a view to "effectiveness" and to "the greatest possible degree of actual desegregation, taking into account the practicalities of the situation."[148] The practicalities may differ when the district line is reached, but not the obligation to consider them. Maximum feasible desegregation remains the objective, and the State remains constitutionally bound to seek it. Especially where state law and practice provide mechanisms for the ready effectuation of inter-district plans, it would be an unwarranted limitation upon *Brown* to say that they need never be considered. In Virginia, with its history of the use of inter-district mechanisms for the purposes of segregation, it would be a travesty.

B. *The Court's Extension of the Tenth Amendment Into Conflict With the Fourteenth Disturbs Established Law.*

The extent to which decision below rests upon the Tenth Amendment is not clear. The Amendment figures prominently in the opinion (A. 563, 579-80) and is said to reserve to the States "the power to structure their internal government" (A. 579). That power is described as absolute (*ibid.*); but then it is recognized as subject to being overridden by the Fourteenth when "'used as an instrument for circumventing'" Fourteenth Amendment rights (A. 580). In this case, the majority concludes that it was not

[148] *Swann*, 402 U.S., at 37.

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so used, because the maintenance of school district lines does not appear to "have been intended to circumvent any federally protected right" (*ibid.*). It is then said that no federally protected rights were in fact denied (*ibid.*).

Perhaps the primary role of the Tenth Amendment here, as the Court of Appeals saw it, was to endow state political arrangements (specifically, school district lines) with a greater degree of immunity against federal judicial review than other forms of state action. Such an attitude of heightened deference, or "hands off," could account for the court's insistence that invidious motivation be shown before district boundaries may be disregarded in the fashioning of a desegregation plan. We shall discuss the "invidious motivation" requirement generally in Subpart IV(C) next following. For present purposes, it suffices to note that, insofar as the requirement was thought by the Court of Appeals to derive from the Tenth Amendment reserved power of the States in regard to their internal government structures, it is inconsistent with settled law.[149]

Indeed, the Tenth Amendment plainly has no proper place in the case at all. The doctrine of *Hunter* v. *Pittsburgh*, which the Court of Appeals cites as confirming the

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[149] *E.g.*, *Baker* v. *Carr*, 369 U.S. 186 (1962) (invalidating 60-year-old legislative apportionment rendered unconstitutional by demographic changes). See particularly *Graham* v. *Folsom*, 200 U.S. 248 (1906):

> "The power of the State to alter or destroy its corporations is not greater than the power of the State to repeal its legislation. Exercise of the latter power has been repeatedly held to be ineffectual to impair the obligation of a contract. The repeal of a law may be more readily undertaken than the abolition of townships or the change of their boundaries or the boundaries of counties. The latter may put on the form of a different purpose than the violation of a contract. But courts cannot permit themselves to be deceived. They will not inquire too closely into the motives of the State, but they will not ignore the effect of its action." (*Id.*, at 253.)

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"absolute discretion" of a State with regard to its municipal corporations,[150] does not speak to situations in which the consequences of the exercise of that discretion collide with federally guaranteed rights. The law of this Court governing such collisions has been settled for 100 years,[151] and state power over the organization and structure of political subdivisions has been consistently subordinated to "the fundamental condition that the collective and individual rights of the people of the municipality shall not thereby be destroyed." [152] Neither this Court[153] nor the lower courts[154] have therefore seen a Tenth Amendment problem in altering the structure or the boundaries of state school districts where necessary and proper to enforce the rights of black school children to a desegregated education.

> "State legislative district lines, congressional districts and other state political subdivisions have long ago lost their mastery over the more desired effect of protecting the equal rights of all citizens. . . . Political subdivisions of the state are mere lines of convenience for exercising divided governmental responsibilities. They cannot serve to deny federal rights." [155]

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[150] *Hunter* v. *Pittsburgh*, 207 U.S. 161, 198 (1907), cited at A. 579.

[151] *Broughton* v. *Pensacola*, 93 U.S. 266 (1876); *Mount Pleasant* v. *Beckwith*, 100 U.S. 514 (1879); *Mobile* v. *Watson*, 116 U.S. 289 (1886); *Comanche County* v. *Lewis*, 133 U.S. 198 (1890); *Shapleigh* v. *San Angelo*, 167 U.S. 646 (1897); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960); *Reynolds* v. *Sims*, 377 U.S. 533 (1964).

[152] *Atkin* v. *Kansas*, 191 U.S. 207, 221 (1903) (dictum).

[153] *Wright* v. *Council of the City of Emporia*, 33 L.ed.2d 51 (1972); *United States* v. *Scotland Neck City Bd. of Educ.*, 33 L.ed.2d 75 (1972).

[154] See cases cited in note 124, *supra*.

[155] *Haney* v. *County Bd. of Educ.*, 410 F.2d 920, 924, 925 (8th Cir. 1969).

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C. *The Court Reintroduces Into the Law of the Fourteenth Amendment a Test of Invidious "Motivation" or "Purpose," Which This Court and the Lower Courts Have Rejected in Related Contexts as Inadequate to Protect the Right of Equality.*

Recognizing, apparently, that this settled body of authority (exemplified in its opinion by reference to *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960)), requires federal courts to ignore state internal geographic boundaries and political structures in at least some circumstances where necessary to prevent them from interfering with the enjoyment or effective enforcement of federal constitutional rights, the Fourth Circuit seeks to define the extent of those circumstances in terms of invidious "motivation" or "purpose." [156] *Gomillion* would authorize the assignment of pupils across school district lines, the court concludes, if but only if those lines could be shown to "have been intended to circumvent" the pupils' right to a desegregated education. (A. 580.) Finding no "invidious discrimination in the establishment or maintenance" of the lines around the City of Richmond (A. 562), the court holds them federally impassable.

Whatever one may think about the accuracy of result of this search for illicit motivation,[157] the overriding point is that the search should not have been made. This kind of subjective inquiry into the mental springs of conduct that separates white people from black people or disadvantages the blacks has consistently been rejected by this Court and the lower courts as a methodology of Equal Protection adjudication. Racial animus is no longer—if it ever was—the hallmark of unconstitutional discrimination. As the Court has recently said quite pointedly

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[156] See text at notes 76-79, *supra*.

[157] See note 131, *supra*.

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of *Gomillion* and cognate cases, "the focus in those cases was on the actual effect of the enactments, not upon the motivation which led the States to behave as they did." *Palmer* v. *Thompson*, 403 U.S. 217, 225 (1971). Conduct, however purposed, whose objective consequences disable blacks in the full enjoyment of their rights as American citizens denies them the equal protection of the laws. *Cassell* v. *Texas*, 339 U.S. 282, 287-290 (1950) (plurality opinion); *Turner* v. *Fouche*, 396 U.S. 346, 360-361 (1970); *Kennedy Park Homes Ass'n* v. *City of Lackawanna*, 436 F.2d 108, 114 (2d Cir. 1970, per Mr. Justice Clark, sitting by designation); *Chance* v. *Board of Examiners*, 458 F.2d 1167, 1170, 1175-1176 (2d Cir. 1972), and cases cited; *Hawkins* v. *Town of Shaw*, 461 F.2d 1171, 1173 (5th Cir. 1972); *Hobson* v. *Hansen*, 269 F. Supp. 401, 497 (D.D.C. 1967), *aff'd sub nom. Smuck* v. *Hobson*, 408 F.2d 175 (D.C. Cir. 1969); *cf. Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971).[158]

It is important to note, of course, that the issue in this present case is not what kinds of conduct, in what context, with what consequences, are required in order to bring their practitioners *initially* under the ban of the Equal Protection Clause—although even as to the issue of initial violation, "[d]iscriminatory motive and purpose . . . are not necessary ingredients of constitutional violations in the field of public education."[159] Since the day that *Brown*

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[158] Although *Griggs* arose under Title VII, not the Constitution, the substantive test of forbidden conduct is essentially the same, at least with regard to the sorts of discriminatory conduct with which Duke Power was charged. "Discriminatory preference for any group . . . is precisely and only what Congress has proscribed." (401 U.S., at 431.)

[159] *Cisneros* v. *Corpus Christi Independent School Dist.*, 5th Cir., No. 71-2397, decided August 2, 1972, slip opinion, p. 13. The *Cisneros* case involved the question whether Mexican-American children were unconstitutionally segregated in the Corpus Christi

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v. *Board of Education* was announced in 1954, the Richmond schools have been operated in violation of the Equal Protection Clause; and the question in this case is what conduct will suffice to end that violation by extirpating racially identifiable schools so as to achieve a "unitary system in which [that] racial discrimination would be eliminated root and branch."[168] Racial identifiability, as the District Court noted, involves "a perception of students, faculty and community perception" (A. 187; 338 F. Supp., at 80) in the "historical context within which a school of disproportionate composition exists" (*ibid.*). That historical context, in Richmond, is one of long-persisting, deep-set, all-pervading racial segregation of the public schools (see pp. 6-13, 18-20, 34-36, *supra*) and of public and private racial discrimination in housing, employment, and every other phase of social life (see pp. 24-25, *supra*). In this setting, the consequences for achieving a unitary school system of the maintenance of school district lines requiring pupils to be assigned to 70% and 80% black city schools and 90% or 100% white county schools that are close together within a socially and economically integrated area do not depend upon "motivation." Nor should their legality. The test should be "effect—not . . . purpose

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school system. Like blacks, they were and long had been isolated in racially identifiable schools; but, unlike the isolation of blacks, theirs had never had a statutory base. The Fifth Circuit, sitting *en banc*, concluded that the isolation of Mexican-Americans from anglos in the public schools, caused by various school board actions not shown to be racially motivated, constituted unconstitutional segregation. "[T]his Court has never tempered its prohibition of school board actions that create, maintain, or foster segregation by the requirement that a discriminatory intent be shown." (*Id.*, at p. 16.) "School cases serve to emphasize the correctness of this principle [that the constitutional test is effect, not motive], for regardless of motive, the children . . . suffer the same. . . ." (*Id.*, at p. 17.)

[168] *Green* v. *County School Bd.*, 391 U.S. 430, 438 (1968).

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or motivation— . . .in determining whether it is a permissible method of dismantling a dual system." [161]

This is what the "splinter district" cases last Term held, under less compelling circumstances. *Wright* v. *Council of the City of Emporia*, 33 L.ed. 2d 51 (1972); *United States* v. *Scotland Neck City Bd. of Educ.*, 33 L.ed. 2d 75 (1972). Although there was disagreement among the Justices upon the facts of *Wright*, there was none upon the proposition that motive was an improper Fourteenth Amendment standard, and that the decisive issue was whether the "operation of a separate school system would either perpetuate racial segregation in the schools of the . . . area or otherwise frustrate the dismantling of the dual system in that area." [162] That decisive criterion, employed by the District Court and rejected by the Court of Appeals below, is also applicable here. For the adventitious difference that Emporia region lay under court mandate whereas the Richmond region lay under the long unfulfilled obligation of *Brown* (I) surely is immaterial to the question whether the measure of desegregation is "effectiveness" [163] or motivation.

D. *The Decision Unduly Curbs the Vital Power of the Federal Courts to Remedy Unconstitutional School Segregation, and Trammels the Traditional Flexibility of Equitable Relief That Was Reconfirmed in School Cases by* Swann.

The Court of Appeals' decision proceeds essentially in three steps. The first step is to assert that the Richmond City schools must be considered in entire isolation—as

[161] *Wright* v. *Council of the City of Emporia*, 33 L.ed.2d 51, 61 (1972).

[162] *Wright* v. *Council of the City of Emporia*, 33 L.ed.2. 51, 66 (1972) (Chief Justice Burger, dissenting).

[163] *Davis* v. *Board of School Comm'rs* 402 U.S. 33, 37 (1971).

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though the city limits were the edge of the known world—in determining whether they have achieved the character of a "unitary" [164] system. The second step asserts that, so considered, they have. We have directed Subparts IV(A), (B) and (C), *supra*, to these two steps. The first involves the errors that we have respectfully suggested, and the second falls with the first.

The Court of Appeals' third step asserts that, once the District Court succeeded by its successive decrees in making the Richmond schools "unitary" in this isolated sense, all its equitable powers instantaneously went out like a light. This third step falls with the first two; but it also involves an independent misconception of such magnitude as to command this Court's review and correction. For it amounts to saying that federal equity to enforce *Brown* v. *Board of Education* is a pale shadow of its ordinary self.

Throughout the years, the Court has used the strongest possible terms in describing federal equity's resources to secure "complete justice." [165] Only last Term, the Court once again sounded that theme, and said that equitable relief "is not limited to the restoration of the *status quo ante*. There is no power to turn back the clock. Rather, the relief must be directed to that which is 'necessary and appropriate in the public interest to *eliminate the effects . . .*'" of whatever evil has required equity's intervention.[166] It goes without saying that, if the litigation is protracted and the evil takes on new forms, equity has

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[164] See note 82, *supra*.

[165] *Brown* v. *Swann*, 35 U.S. (10 Pet.) 497, 503 (1836). *See, e.g., Camp* v. *Boyd*, 229 U.S. 530, 551 (1913); *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329-330 (1944).

[166] *Ford Motor Co.* v. *United States*, 405 U.S. 562, 573 n. 8 (1972) (emphasis in original).

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ample power to pursue it.[167] Indeed, it is "the duty of the court to modify . . . [a] decree so as to assure the complete extirpation of the illegal" conduct.[168]

Once such conduct has been found, "equity has the power to uproot all parts of an illegal scheme—the valid as well as the invalid."[169] This point has been made again and again in anti-trust cases.

> "A trial court upon a finding of a conspiracy in restraint of trade and a monopoly has the duty to compel action by the conspirators that will, so far as practicable, cure the ill effects of the illegal conduct, and assure the public freedom from its continuance. Such action is not limited to prohibition of the proven means by which the evil was accomplished, but may range broadly through practices connected with the acts actually found to be illegal. Acts entirely proper when viewed alone may be prohibited."[170]

If the federal courts have as ample powers to enforce the Constitution as the anti-trust laws—and this seems to be the least implication of *Brown* (II) and *Swann*—then the test of their appropriate exercise is "effectiveness"[171] to assure "that state-imposed segregation has been completely removed," "eliminated root and branch."[172] Under

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[167] See, *e.g.*, *United States* v. *Armour & Co.*, 402 U.S. 673, 681 (1971) (dictum).

[168] *United States* v. *United Shoe Machinery Corp.*, 391 U.S. 244, 251 (1968).

[169] *United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 148 (1948).

[170] *United States* v. *United States Gypsum Co.*, 340 U.S. 76, 88-89 (1950). In addition to the cases cited in *Gypsum*, see, *e.g.*, *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 189-190 (1944); *United States* v. *Loew's, Inc.*, 371 U.S. 38, 53 (1962).

[171] *Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 37 (1971).

[172] *Green* v. *County School Bd.*, 391 U.S. 430, 438, 439 (1968).

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this standard, the District Judge here had "not merely the power but the duty to render a decree which [would] . . . so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." [173] He was not restricted, in his means of disestablishing Richmond's dual school system, to forms of school district organization that might have passed constitutional muster if voluntarily adopted by the Virginia school authorities 75, or 18, or 10 years ago—or which, "viewed alone," [174] would not violate the Constitution even today. He was not obliged to ignore patterns of population growth which, occurring during long years of non-compliance with *Brown*, had finally turned the Richmond City schools so black that compliance with *Brown* limited to the City's borders would remain "pathetically incomplete" (A. 237; 338 F. Supp., at 103.)

What the District Judge here did was precisely to take account of these principles and these "practicalities." [175] He found that:

> . . . long years of maintenance of the dual system, many subsequent to formal legal declaration of its invalidity, massive and effective state-managed efforts to oppose desegregation under free choice assignment plans which caused more and more facilities in the area to become segregated by a process of white withdrawal and black occupation, have, together with [other] . . . forces . . . containing blacks in the city, produced a community school system divided into racially identifiable sectors by political boundaries. The problem has intensified with passing years, but its growth has been

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[173] *Louisiana* v. *United States*, 380 U.S. 145, 154 (1965).

[174] See text at note 170, *supra*.

[175] *Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 37 (1971).

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> foreseeable and all officials were well advised of its coming. At present, the disparities are so great that the only remedy promising of immediate success—not to speak of stable solutions—involves crossing these lines. (A. 230; 338 F. Supp., at 100.)

Finding further that these particular school district lines "are unrelated to any administrative or educational needs" (A. 103; 338 F. Supp., at 83), so that their use as categorical limits upon pupil assignment was not required by any legitimate state interest,[176] he ordered that the lines be crossed.

Such relief is squarely in the grain of the traditional powers of federal equity. To deny the district courts all competence to give it, as the Court of Appeals has done, breaks sharply with that tradition. It abridges the "breadth and flexibility" [177] of remedies necessary to vindicate the right declared in *Brown* v. *Board of Education*, and thereby intolerably restricts the force of *Brown* itself.

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[176] *Cf. McLaughlin* v. *Florida*, 379 U.S. 184, 196 (1964); *Loving* v. *Virginia*, 388 U.S. 1, 11 (1967).

[177] *Swann*, 402 U.S., at 15.

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CONCLUSION

The writ of certiorari should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1972

FILED
DEC 16 1972
MICHAEL RODAK, JR., CLERK

No. 72-549

THE SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, *et al.*,

Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, *et al.*

No. 72-550

CAROLYN BRADLEY, *et al.*,

Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, *et al.*

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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THE SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, *et al.*,

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Counsel for petitioners in each of these cases, presently pending upon petitions for writs of certiorari, file this joint supplemental brief pursuant to Rule 24(5) of this Court. A significant decision of another United States Court of Appeals has been rendered since the filing of the

petitions for writs of certiorari, which conflicts with the decision of which review is sought by the petitioners, and which underscores the importance and desirability of granting review.

On December 8, 1972, the United States Court of Appeals for the Sixth Circuit rendered a decision in *Bradley* v. *Milliken*, Nos. 72-1809, -1814, which affirmed the district court's decision to require a plan of desegregation for Detroit not limited by school district boundary lines, and upheld the power of the court to fashion such a remedy. (The district court decision is referred to in note 36 at page 53 of the Petition in No. 72-549 and in note 122, page 64 of the Petition in No. 72-550.) The Court of Appeals' opinion in the Detroit case, *Bradley* v. *Milliken*, is directly contrary to the decision below of which review is sought. (See the Sixth Circuit's comment at page 67 of the opinion, declining to follow the Fourth Circuit.)

The decision of the Court of Appeals for the Sixth Circuit is appended hereto.

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APPENDIX

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Nos. 72-1809 – 72-1814

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

RONALD BRADLEY, ET AL.,
Plaintiffs-Appellees,

v.

WILLIAM G. MILLIKEN, Governor of Michigan, etc.; BOARD OF EDUCATION OF THE CITY OF DETROIT,
Defendants-Appellants,

and

DETROIT FEDERATION OF TEACHERS LOCAL 231, AMERICAN FEDERATION OF TEACHERS, AFL-CIO,
Defendant-Intervenor-Appellee,

and

ALLEN PARK PUBLIC SCHOOLS, ET AL.,
Defendants-Intervenors-Appellants,

and

KERRY GREEN, ET AL.,
Defendants-Intervenors-Appellees.

APPEAL from the United States District Court for the Eastern District of Michigan, Southern Division.

Decided and Filed December 8 1972.

Before PHILLIPS, Chief Judge, EDWARDS and PECK, Circuit Judges.

PHILLIPS, Chief Judge. This is a school desegregation case involving the metropolitan area of Detroit, Michigan.

The present appeal is the fourth time that the case has been before this court since the complaint was filed August 18,

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1970. The earlier decisions of this court are reported at *Bradley* v. *Milliken*, 433 F.2d 897 (1970); *Bradley* v. *Milliken*, 438 F.2d 897 (1971); and *Bradley* v. *Milliken*, — F.2d — (1972), *cert. denied*, — U.S. —, 41 U.S.L.W. 3175 (Oct. 10, 1972). (On November 27, 1972 this Court dismissed for want of jurisdiction an "emergency motion" by the Detroit Board of Education that State officials be required to provide funds to keep the Detroit public schools operating for 180 regular days of instruction during the current school year. — F. 2d —.)

No specific desegregation plan has been ordered by the District Court. The procedural history of the litigation is set forth below.

Before this court at the present time are four interlocutory orders from which we have granted appeal pursuant to 28 U.S.C. § 1292(b) and one final order, viz:

1. Ruling on Issue of Segregation, dated September 27, 1971, reported at 338 F.Supp. 582;

2. Findings of fact and conclusions of law on "Detroit only" plans of desegregation, dated March 28, 1972;

3. Ruling on Propriety of a Metropolitan Remedy to Accomplish Desegregation of the Public Schools of the City of Detroit, dated March 24, 1972;

4. Ruling on Desegregation Area and Development of Plan, and Findings of Fact and Conclusions of Law in support thereof, dated June 14, 1972; and

5. Order dated July 11, 1972, directing Michigan State officials to purchase 295 school buses (which this court considers to be a final order).

On July 13, 1972, following oral argument, this court granted a motion for a temporary stay of the District Court's order of July 11, 1972, ordering the purchase of 295 school buses.

On July 17, 1972, following oral argument, this court directed that its stay order remain in effect until entry by the District Court of a final desegregation order or until certification by the

District Court of an appealable question as provided by 28 U.S.C. § 1292(b).

Thereafter the District Court certified that the orders set forth above involve controlling questions of law, as provided by 28 U.S.C. § 1292(b), and made a determination of finality under Rule 54(b), Fed. R. Civ. P.

On July 20, 1972, this court entered an order granting the interlocutory appeal concluding that:

> "[A]mong the substantial questions presented there is at least one difficult issue of first impression that never has been decided by this court or the Supreme Court. In so holding we imply nothing as to our view of the merits of this appeal. We conclude that an immediate appeal may materially advance the ultimate termination of the litigation."

The motion for leave to appeal was granted and the case was advanced for oral arguments on the merits on August 24, 1972.

The July 20, 1972, order of this court included the following stay order, which has remained in effect pending final disposition of the appeal on its merits:

> "The motion for stay pending appeal having been considered, it is further ORDERED that the Order for Acquisition of Transportation, entered by the District Court on July 11, 1972, and all orders of the District Court concerned with pupil and faculty reassignment within the Metropolitan Area beyond the geographical jurisdiction of the Detroit Board of Education, and all other proceedings in the District Court other than planning proceedings, be stayed pending the hearing of this appeal on its merits and the disposition of the appeal by this court, or until further order of this court. This stay order does not apply to the studies and planning of the panel which has been appointed by the District Court in its order of June 14, 1972, which panel was charged with the duty of preparing interim and final plans of desegregation. Said

> panel is authorized to proceed with its studies' and planning during the disposition of this appeal, to the end that there will be no unnecessary delay in the implementation of the ultimate steps contemplated in the orders of the District Court in event the decision of the District Court is affirmed on appeal. Pending disposition of the appeal, the defendants and the School Districts involved shall supply administrative and staff assistance to the aforesaid panel upon its request. Until further order of this court, the reasonable costs incurred by the panel shall be paid as provided by the District Court's order of June 14, 1972."

This court also has granted leave to appeal to various intervening parties and leave to file numerous amicus briefs. Extensive oral arguments on the merits were heard August 24, 1972. The briefs and arguments of all the parties have been considered in the disposition of this appeal.

We affirm two of the rulings of the District Court summarized above: (1) The Ruling on the Issue of Segregation and (2) the Findings of Fact and Conclusions of Law on "Detroit-only" plans of desegregation. We hold that the findings of fact of the District Court as set forth in these rulings are not clearly erroneous, Rule 52(a), Fed. R. Civ. P., but to the contrary are supported by substantial evidence.

As to the District Court's third ruling pertaining to the propriety of a Metropolitan remedy, we affirm in part and reverse in part. We vacate this and the two remaining orders and remand to the District Court for further proceedings as hereinafter set forth in detail in this opinion.

I. Chronology of Proceedings

On April 7, 1970, the Detroit Board of Education adopted a plan to effect a more balanced distribution of black and white students in the senior high schools through enactment of changes in attendance zones involving some 12,000 pupils, to become effective over a three year period. Three months later this modest effort was thwarted by the legislature of

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the State of Michigan through enactment of Act 48 of the Public Acts of 1970. Section 12 of the Act delayed implementation of the plan. The four members of the Board who supported the April 7 plan were removed from office through a citizen initiated recall election. The new members of the board and the incumbent members who had originally opposed the April 7 plan thereafter rescinded it.

The complaint in this case was filed by individual black and white school children and their parents, and the Detroit branch of the NAACP against the Board of Education of the City of Detroit, its members, and the then Superintendent of Schools, as well as the Governor, the Attorney General, the State Board of Education and the State Superintendent of Public Instruction of the State of Michigan.

The complaint alleged that the Detroit public school system was and is segregated on the basis of race as the result of actions and policies of the Board of Education and of the State of Michigan. The complaint specifically challenged the constitutionality of Act 48 of the Public Acts of 1970 of the State of Michigan, which in effect repealed the April 7, 1970, high school desegregation plan formulated by the Detroit Board.

The case was heard originally on plaintiffs' motion for a preliminary injunction to restrain the enforcement of Act 48. In response to this motion the District Judge denied a preliminary injunction, did not rule on the constitutionality of Act 48, but granted the motion of the Governor and Attorney General of Michigan for dismissal of the cause as to them. On appeal this court held that § 12 of Act 48 was an unconstitutional interference with the lawful protection of Fourteenth Amendment rights, that there was no abuse of discretion in denying a preliminary injunction, and that the Governor and Attorney General should not have been dismissed as parties defendant at that stage of the proceeding. The case was remanded to the District Court for an expedited trial on the merits. 433 F.2d 897.

IN CENTER

On remand plaintiffs moved for immediate implementation of the April 7 plan. On December 3, 1970, following an evidentiary hearing on that plan and two updated plans, the District Court ordered implementation of the "Magnet" or "McDonald" plan effective at the beginning of the next full school year, pending ultimate disposition on the merits. Plaintiffs appealed and filed a motion for summary reversal. This court again held that the District Court had not abused its discretion in refusing to adopt the April 7 plan prior to an evidentiary hearing on the allegations of constitutional violations in the complaint. We remanded the case with instructions to proceed to trial expeditiously on the merits of plaintiffs' allegations concerning the Detroit public school system. 438 F.2d 945. The trial of the case on the issue of segregation began April 6, 1971, and continued until July 22, 1971, consuming 41 trial days. On September 27, 1971, the District Court issued its ruling on the issue of segregation, holding that the Detroit public school system was racially segregated as a result of unconstitutional practices on the part of the defendant Detroit Board of Education and the Michigan State defendants. 338 F.Supp. 582.

A decision on a motion to join a large number of suburban school districts as parties defendant was deferred on the ground that the motion was premature, in that no reasonably specific desegregation plan was before the court. The Detroit Board of Education was ordered to submit desegregation plans limited to the City, while State defendants were directed to submit plans encompassing the three-county metropolitan area. An effort was made to appeal these orders to this court. On February 23, 1972, this court held the orders to be non-appealable and dismissed the appeal. — F.2d —, *cert. denied*, — U.S. —, 41 U.S.L.W. 3175 (Oct. 10, 1972).

After further proceedings concerning proposals for a Detroit only desegregation remedy and the presentation of two plans therefor, the District Judge on March 24, 1972, issued a ruling entitled "Ruling on Propriety of Considering a Metro-

politan Remedy," and on March 28, 1972, he issued "Findings of Fact and Conclusions of Law on Detroit Only Plans of Desegregation." He rejected all Detroit only plans, saying in part: "Relief of segregation in the public schools of the City of Detroit cannot be accomplished within the corporate geographical limits of the city."

Subsequently, the District Court issued an order on June 14, 1972, entitled "Ruling on Desegregation Area and Order for Development of Plan for Desegregation." In this ruling and order the District Court established tentative boundaries for a metropolitan remedy and provided for a panel of nine members to design plans for integration of the Detroit schools and those of 53 metropolitan school districts within certain guidelines.

The panel recommended preparatory purchases of school buses prior to implementation of an interim plan in September 1972. Following a hearing, the District Court on July 11 ordered State defendants to purchase or otherwise acquire 295 school buses.

In view of the intervening Congressional action by the enactment of the "Broomfield Amendment," certification was made to the Attorney General of the United States that the constitutionality of § 803 of the Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235, had been called into question. The Department of Justice intervened, filed a brief and participated in the oral arguments before this court.

II. The Issues

All of the parties to this litigation in one form or another present three basic issues which we phrase as follows:

1. Are the District Court's findings of fact pertaining to constitutional violations resulting in system-wide racial segregation of the Detroit Public Schools supported by substantial evidence or are they clearly erroneous?

2. Based on the record in this case, can a constitutionally

adequate system of desegregated schools be established within the geographic limits of the Detroit school district?

3. On this record does the District Judge's order requiring preparation of a metropolitan plan for cross-district assignment and transportation of school children throughout the Detroit metropolitan area represent a proper exercise of the equity power of the District Court?

III. The Constitutional Violations

(A) Constitutional violations found to have been committed by the Detroit Board of Education:

(1) Segregative zoning and assignment practices.

(a) The District Judge found that the Detroit Board of Education formulated and modified attendance zones to create or perpetuate racial segregation. He also found that the feeder system for junior and senior high schools was designed to maintain rather than eliminate black or white schools at the higher levels. Its practice of shaping school attendance zones on a north-south rather than an east-west orientation resulted in attendance zone boundaries conforming to racial dividing lines.

(b) He further found that the Detroit Board of Education's policies involved a substantial number of instances of transporting black children past white schools with available school space.

(2) He also found that it was the policy of the Board of Education to create optional attendance areas which permitted white students to transfer to all white or predominately white schools located nearer the city limits.

(3) The District Judge also found that the policies of the Detroit Board of Education (and State Board of Education) concerning school construction in some instances had the purpose of segregating students on a racial basis and in many others resulted in maintaining or increasing segregation.

(1) Segregative Zoning and Assignment Practices.

(a) The District Judge's findings of fact pertaining to alteration of zones and feeder patterns are as follows:

"The Board has created and altered attendance zones, maintained and altered grade structures and created and altered feeder school patterns in a manner which has had the natural, probable and actual effect of continuing black and white pupils in racially segregated schools. The Board admits at least one instance where it purposefully and intentionally built and maintained a school and its attendance zone to contain black students. Throughout the last decade (and presently) school attendance zones of opposite racial compositions have been separated by north-south boundary lines, despite the Board's awareness (since at least 1962) that drawing boundary lines in an east-west direction would result in significant integration. The natural and actual effect of these acts and failures to act has been the creation and perpetuation of school segregation. There has never been a feeder pattern or zoning change which placed a predominantly white residential area into a predominantly black school zone or feeder pattern. Every school which was 90% or more black in 1960, and which is still in use today, remains 90% or more black." 338 F.Supp. at 588.

The legal conclusion of the District Judge is as follows:

"5. The Board's practice of shaping school attendance zones on a north-south rather than an east-west orientation, with the result that zone boundaries conformed to racial residential dividing lines, violated the Fourteenth

'Their first disillusionment occurred only a few months, but yet a few weeks after the passage of the millage – they were rewarded with the creation of the present Center District. In effect this District, with a few minor exceptions, created a segregated school system. It accomplished with a few marks of the crayon on the map, the return of the Negro child from the few instances of an integrated school exposure, to the traditional predominantly uniracial school system to which he had formerly been accustomed in the City of Detroit.

'Their attempts to meet this threat to their children's educational experience through existing school organizations met with little success. Their conferences with District and City-Wide administrators including the superintendent, Dr. Samuel Brownell, resulted in only rationalizations concerning segregated housing patterns, and denials of any attempts at segregation. When it was pointed out that regardless of motivation, that segregation was the result of their boundary changes, little compromise was effected, except in one or two instances, where opposition leadership was most vocal and aggressive.

'Concurrent with boundary changes, it was alarmingly noticeable that the school population within the Center District was rapidly increasing, and that the priority building program would have little positive effect in dealing with the problem. Attempts to discuss this problem with school and district administration gave promise of only minimal relief.

'Finally, it had been earlier noted by new residents moving into what is now the Center District that prior to and during its change from a uniracial (predominantly white) to a biracial system and again to a uniracial (predominantly Negro) school system that the quality of their children's previous educational experiences did not eqiup them to compete on an equal basis with resident children in the same grade and classifications.

'These experiences made them aware that no one organization composed of one or several schools, could ef-

fectively coordinate the mutual concern of the many parents residing within the Center District. Thus out of the several discussions of groups of people whose primary concern was the adequate and equitable education of their children, this organization was born. It is felt that no better description of its purpose, its objective, and its reason for being can be found than in the preamble to its Constitution, which is:

'PREAMBLE: Our interest is in equal educational opportunities for all persons within the City of Detroit.

'We do not believe that such opportunities are possible within a segregated school system.

'We oppose a policy of containment of minority groups within specified boundaries, an example of which is the Center District. While the above is of utmost concern to us we are also aware that there is need for improvement and enrichment of the standards within this district in practice as well as in theory.

'We believe that once standards have become reasonably adequate, that such standards should be maintained. It should be further recognized that future population shifts brought about by urban redevelopment will adversely affect the above goals in the Center District, unless there is anticipation of the impact of this population growth upon this district.

'Since the inception of our organization we have noted the following:

'The public school system of the City of Detroit is divided into nine administrative districts, one of which is the Center District.

'Yet, every day, when the children in this city leave their homes to go forth to public schools, approximately one out of every four leaves a home in the Center District. Of the 154,969 children enrolled in public elementary schools as of September 30, 1960, 36,264 or 23.4 percent of these children leave a home in the Center District.

There are 221 elementary school buildings in the Detroit Public School System. Of these 28 are in the Center District. This means, then, that the 23.4 percent of the total elementary school population is accommodated in 12.7 percent of the buildings.

Fifteen percent of these children sit in classes of 40 to 44 students per class. This is in comparison to:

East	.13 percent
North	.05 percent
Northeast	.04 percent
Northwest	.08 percent
South	.01 percent
Southeast	.01 percent
West	.05 percent

Sixty-two and one-half percent of all the children in the city's elementary schools who sit in classes of 45 to 49 are children in the Center District. These schools in the Center District find their capacities short by 6,352 pupil stations. In other words, their capacities are overtaxed to the extent of 16 percent; and the future building program, as set forth by the superintendent's report of October 17, 1960, will make available only 11,189 additional pupil stations within the next ten-year period. However, this will be insufficient to meet the demands of the Center District. Therefore, it is apparent that a school bussing program will have to become a permanent part of the school housing program. Thus the manner in which the bussing program is administered becomes a matter of acute concern.

Presently, children are being bussed by grades. Under this system a number of problems are created:

1) It makes necessary a reorganization of the bussing school, as well as the school into which the children are bussed.

2) They are not integrated into the school into which they are bussed, except in minor instances.

3) There is a possibility of the separation of the family unit.

4) Parents are unable to establish a good rapport with the teachers and administrators in the new school since there exists a time limit in which these children will be members of that school.

'It is recommended that a policy of bussing by geographical areas instead of by grades be instituted so as to eliminate the above problems.

'The emphasis on curricula objective are not comparable in the various school districts of the Detroit School System. There is a tendancy in the Center District to stereotype the educational capacity of the children. This means that children entering the schools in this district whose background enables them to comprehend an enriched educational program, are not challenged.

'For example, one student in the Hutchins Intermediate School who desired to prepare for entrance into an Eastern college found that Latin was not offered, and only after considerable effort by members of the community, along with his family, was Latin placed back in the school curriculum. Many other instances can be cited upon request.

'Conversely, children whose initial capacity is retarded by deprived socio-economic circumstances also go unchallenged. The District Administrator has admitted that no program exists to take care of these children.

'The curriculum and counselling as they now exist, do not encourage students to achieve their maximum capacities. We feel that the responsibility for any inequities in the educational experience offered to any group of children within a given school system must be assumed by those persons charged with the overall responsibility of administering that system.

'Therefore, we recommend that strong policies be adopted by the top administration to erase inequities of the

Detroit Public School System, and a policy of supervision through all levels of administration be instituted at all levels of administration to insure equal educational opportunities to all children.

"The Citizens' Association for Better Schools."

"Q. Do you join in that statement in submission to the committee?

"A. Yes, I did."

• • •

Mr. Wells cited the example of the Center (administrative) District, where attendance boundaries were shaped in a gerrymandered fashion to conform to the racial residential pattern.

"Q. With regard to that same situation, you were expressing a problem which your committee had met in attempting to discuss this. Can you tell me how you came to be discussing this with the Board at that time?

"A. It was not with the Board of Education, I believe it was with the administration of the school system.

"Q. The administrative staff?

"A. Including the superintendent.

"Q. All right.

"A. Our initial concern about the boundaries of the center district grew out of the concern we had in 1960 about the changing of the attendance areas between the Central High School and the Mackenzie High School.

"Q. Is that the optional attendance area also set up in that?

"A. A part of that was optional. Well, let's put it that way, a part of it had been optional, the proposal was to eliminate the option. In the process of eliminating the option what it would mean would be that by and large the few black children who had been attending Mackenzie would have been pulled back into the Central area.

"Q. Mackenzie at that time was a majority white school?

"A. Predominatly white.

"Q. Central by that time had become black?

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"A. Predominatly black.

"Q. So the cancellation of the optional area which had been there had the effect of preventing black children choosing Mackenzie, is that correct?

"A. That is right.

"Q. Were there any other schools – there is a reference made to the establishment of the center district boundaries – were there any other schools which had not previously been in certain feeder patterns that were drawn back into the center district?

"A. I am trying to remember now as I said eleven years.

"Q. I understand.

"A. If I remember correctly, the Sherrill School which also had been a part of it, that portion north of Tireman had been attending Mackenzie and they in turn, the total school then would have been returned to the Chadsey area.

"Q. What about Tappan and that area, are you familiar at all with changes that took place?

"A. Tappan was the junior high school in which Winterhalter, the elementary school in the area south of Davison just west of Ewald Circle attended. At that time the students from that area attended Tappan and all students from Tappan attended Mackenzie.

"The new change would mean that the students from Winterhalter, and I think McKerrow which is just below Winterhalter would have attended Tappan through the 9th grade, but then had been pulled back into the center district to attend Central High School.

"The other students in Tappan would have gone to Mackenzie.

"Q. The other students in Tappan, were they predominatly white students?

"A. Yes. Our concern about this region really at that time was that we could draw a line which separated the black residents from the white residents and almost to the alley and that in effect was the boundary line of the center district."

There was evidence that school feeder patterns were changed so as to make particular junior high schools or senior high schools either generally white or generally black, as shown in the following testimony:

"MR. CALDWELL: Your Honor, I have copies of the Mumford High School district in 1959 which is taken from Plaintiff's Exhibit 78-A, and this makes it easier to see the schools.

"Q. Let's get back to the 1962-'63 overlay.

"Prior to the 1962-'63 – first of all, will you point out to the Court where the Vandenberg and Vernor Schools are.

"A. This triangle to the northwest corner of this area. (indicating)

"Q. Prior to 1962-63 where did the Vernor and Vanderburg youngsters go to high school?

"A. Mumford High School.

"Q. A boundary change was made in 1962-63?

"A. That's right.

"Q. Where did those youngsters go to school in that year?

"A. Ford High School.

"Q. How long did that feeder pattern continue?

"A. Until 1966-67 when they returned to Mumford.

"Q. All right.

"MR. CALDWELL: Plaintiffs' Exhibit 128-A, your Honor, reflects that in 1960 Vandenburg and Vernor were 0 percent black. Mumford was 16.1 black, Ford was .1 percent black. With regard to Vandenburg and Vernor, there was a gradual increase in the black population until 1966 when Vandenburg was 39.5 percent black and Vernor was 39.8 percent black.

"Then in 1967 the change was made taking Vandenburg and Vernor back into Mumford. Vandenburg had become 70 percent black, Vernor had become 63.2 percent black. That year the change was made and Mumford was 78.1 percent black, Ford was 4.1 percent black.

"Q. I believe that feeder pattern continued into the current school year?

"A. That is right.

"Q. Those schools now feed back into Ford High School this year?

"A. That is right."

The effect of such a policy was attested to by Dr. Gordon Foster of the University of Miami, director of the Florida School Desegregation Consulting Center:

"Q. The effect, Doctor, then, of the removal of Vandenberg and Vernor from the Ford feeder pattern into the Mumford feeder pattern, what was the effect in terms of race?

"A. The effect of this move in 1967-68 of the transfer back of the two elementary schools was to increase the segregation at Mumford, to take blacks from the Ford High School and, therefore, increase the segregated pattern there, and, in my opinion, it reinforced inevitably the perception that Ford would be kept white as a matter of basic policy and that Mumford would be a racially contained isolated high school attendance area."

Similar testimony regarding the segregative effect of altering school feeder patterns was given with respect to the Jefferson and Hutchins Junior High Schools, Garfield and Spain Junior High Schools, Burton and Irving Elementary Schools, Higginbotham Elementary School, Jackson and Foch Junior High Schools, Stellwagen, Keating and Clark Elementary Schools, Cleveland and Nolan Junior High Schools, Courville Elementary School, Ford and Brooks Junior High Schools, Osborne and Pershing High Schools, Parkman Elementary School, the Ellis, Sills, Newberry and Sampson Elementary Schools, and Northwestern and Chadsey High Schools.

(b) The District Judge made the following findings of fact pertaining to busing black children to black schools past white schools:

> "The Board, in the operation of its transportation to relieve overcrowding policy, has admittedly bused black pupils past or away from closer white schools with available space to black schools. This practice has continued in several instances in recent years despite the Board's avowed policy, adopted in 1967, to utilize transportation to increase integration.
>
> "With one exception (necessitated by the burning of a white school), defendant Board has never bused white children to predominantly black schools. The Board has not bused white pupils to black schools despite the enormous amount of space available in inner-city schools. There were 22,961 vacant seats in schools 90% or more black." 338 F.Supp. at 588.

The legal conclusion of the District Judge follows:

> "8. The practice of the Board of transporting black students from overcrowded black schools to other identifiably black schools, while passing closer identifiably white schools, which could have accepted these pupils, amounted to an act of segregation by the school authorities. Spangler v. Pasadena City Bd. of Ed., D.C., 311 F.Supp. 501." 338 F.Supp. at 593.

Additional support for the District Judge's legal conclusion includes: *United States* v. *School District 151*, 286 F.Supp. 786, 798 (N.D. Ill. 1967), *aff'd*, 404 F.2d 1125, 1131 (7th Cir. 1968), *on remand*, 301 F.Supp. 201, 211, 222 (N.D. Ill. 1969), *aff'd*, 432 F.2d 1147, 1150 (7th Cir. 1970), *cert. denied*, 402 U.S. 943 (1971); *United States* v. *Board of School Commissioners, Indianapolis, Ind.*, 332 F.Supp. 655, 669 (S.D. Ind. 1971).

The following testimony pertains to busing black children from overcrowded black schools past white schools with available pupil capacity to other black schools:

> "Q. I am trying to anticipate, Mr. Ritchie's question. Have you noted some examples of the bussing of black children from black schools to other black schools?

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"A. I have.

"Q. Could you give us a couple illustrations?

"MR. BUSHNELL: While Dr. Foster is looking through his notes, might I make the request that we made yesterday that on conclusion of his testimony we have access to the notes made?

"MR. LUCAS: At the conclusion, yes. We have no objection to that.

"A. In 1960-61, and we don't have any record for '61-62 so I am not certain as to that year, students were transported from Angell to Greenfield Park. This has already been part of our testimony, I believe, 186 students and students from Angell to Higginbotham, 118 students. In 1969 –

"Q. Excuse me, Doctor, let me ask you if the Angell-Higginbotham – were there white schools available with space, from your examination of the records?

"A. Yes, there were.

"Q. Between Angell and Higginbotham?

"A. Yes, sir, I believe I testified to that before.

"Q. All right.

"A. In 1969 the Ruthruff Elementary School which was 99 percent black transported 143 children to Herman Elementary, 55 percent black.

• • •

"Q. (By Mr. Lucas, continuing) Dr. Foster, would you step to the map.

"I think we were talking about the Ruthruff-Herman Schools.

"A. Yes. We were testifying at recess about transportation of blacks past white schools. In 1969 we stated that Ruthruff Elementary which is here in the southeastern portion of the Mackenzie High School zone on the large 1970-71 attendance area map, in 1969 transported 143 children to Herman Elementary School which is just below the blue area on the undermap here – Herman Elementary School (indicating). Herman in 1969 was 55.6 percent black. Ruthruff was 99.1 percent black and I think it is important to note that the access

to Herman goes right past the Parkman Elementary School which at that time had 136 spaces available and according to their capacity figures —

"Q. Parkman was what percentage?

"A. Parkman I don't have the figure for '69 and '70. Parkman was 12.8 percent black."

• • •

"A. Another example was the Parker Elementary School which is in the general center of the Mackenzie High School zone. Parker in 1970 was 79.4 black; 61 children were bussed from Parker again to the Herman Elementary School which at that time was 58.5 percent black and again past the Parkman Elementary which in 1970 was 12.8 percent black.

"Q. Did Parkman have capacity at that time, Doctor?

"A. Parkman in '70, according to my data, had 121 spaces.

• • •

"Q. Excuse me, would you give us the A. L. Homes.

"MR. BUSHNELL: I thought the Court ruled on that?

"THE COURT: He says he is pursuing a non-cumulative matter here. If that be true he may go ahead.

"A. A. L. Holmes School, children were bussed from this school over to the McGraw School which is in the south end of the Northwestern District in center city. In 1970-71 the Post Junior High School, which is located —

"MR. BUSHNELL: If the Court please, Mr. Lucas just pointed out the location of Post which the witness obviously couldn't find on the map.

"THE COURT: Well, he hasn't moved it.

"A. I noted the west section of Cooley instead of the east. The Post Junior High School and Clinton Schools, which are in the east section of the Cooley High School attendance zone transported 54 students to the Jefferson School which is now in the Murray zone and it is located in the eastern section of the Murray High School attendance area. I think it is important to note that

these students who were bussed came from a considerable distance north and there were several possibilities —

"Q. Excuse me, were the Post children in a black school or white school?

"A. The Post School this year, 1970-71 was 99.3 percent black. The Clinton School from which they also came was 97 percent black.

"Q. What about Jefferson?

"A. Jefferson was 87.6 percent black. There were two or three other possibilities much closer to the Post-Clinton area. One would have been in the western portion of the Mackenzie district here (indicating).

"Q. What is the racial composition?

"A. At this time it had 35.4 percent black with a capacity of 109 stations available. Another possibility would have been the Vetal School in the Redford zone, the southern portion of the Redford High School zone, which at this time was 2 percent black with vacancies of 203 pupil stations and a third alternative could have been the Coffey School to the east of the Ford attendance area which at this time was 29 percent black with 69 pupil stations available.

"Q. Did you say to the east was part of the Ford attendance area or outside of that, Doctor?

"A. It's in the Ford attendance area.

• • •

"THE COURT: Well, to save time why don't we proceed on the assumption that that was his testimony. But if it proves otherwise we will strike it.

"MR. LUCAS: Thank you, sir.

"Q. (By Mr. Lucas) Doctor, I understand that the policy of the district is that bussing to relieve overcrowding would be done in such a manner as to improve integration at the receiving school. From your examination of the current bussing examples which you have given, do you have an opinion as to whether or not that policy has or has not been followed?

"A. Well, I think from the examples I have given so far it would give an indication that integration could

have been effected in a much better way if the children, instead of going to the schools would have been dropped off at other schools where the racial balance was quite different.

* * *

"Q. Are there any white schools from your examination of data, Doctor Foster, between Angell and Higginbotham which had capacity at that time?

"A. Yes, there were several which were a good deal closer to Angell than Higginbotham. The effect of this sort of zoning pattern was to provide segregated student ratios at all three of the elementary schools, and in terms of things that could be done or could have been done at that particular time to correct the segregated situation, it is my opinion that, first of all, the students being bussed from Angell could have been dropped off at any number of places on the way to Higginbotham, schools which had the space and had a better racial composition for this sort of input. This having been done, zone lines could have been redrawn at these three schools to have approached a racial balance situation which, in my opinion, would have helped to stabilize the situation at that time. This would have also assisted in the overcrowding at Pasteur and a couple of classrooms extra at Higginbotham.

"Q. Do you have an opinion, Doctor, as to the perception created by the maintenance of the Higginbotham School under those circumstances, including the transportation of black students from Angell into it?

"A. Well, it is obvious that if you transport black children past white schools to an all black school that the community is going to perceive this as a segregated intent, a segregated action. If you have a boundary situation which isolates and enforces black students to a particular area when the boundary lines could be changed to effectuate a better pattern racially, then it seems to me that community perception would also be that the school is not doing what it could in terms of integration and equal opportunity.

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"Q. Doctor, from your examination of the data in 1960 are there any administrative reasons, any administrative problems which would indicate to you a reason why this boundary was maintained rather than drawn in some other fashion?

"A. In terms of school capacity there are none, no."

Defendant's witness (Mr. Henrickson) admitted instances of busing black students past closer white schools to black schools:

"Q. We find on the under and over capacity map in the Higginbotham area that there were three schools surrounding Higginbotham. Vernor, which is listed as being 121 over capacity; MacDowell, 103, is it? Pasteur, 90. At the same time we find that Higginbotham was 489 under capacity. Is that what the exhibit shows, sir?

"A. Yes.

"Q. We also know, do we not, that Pasteur, MacDowell and Vernor were white schools?

"A. Both Pasteur and MacDowell at that time, as I recall, had some beginning of black students as a result of the growth of the settlement of the Higginbotham area.

"Q. They were predominatly white schools at that time?

"A. Yes.

"Q. Higginbotham was all or virtually all black?

"A. Yes.

"Q. Indeed, it had been the same in 1950, had it not?

"A. Yes.

"Q. At the same time that we are talking about you were transporting youngsters from Angell to Higginbotham, is that correct?

"A. Yes.

"Q. Those were black kids being transported from Angell to Higginbotham?

"A. Yes.

"Q. We also know on that exhibit that they were

transported past such schools as Fitzgerald and Clinton which had more than enough capacity to handle them?

"A. We have made no denial of that."

For some years it was a Board of Education policy to transport classrooms of black children intact to white schools where they were educated in segregated classes.

Testimony as to the intact busing practice follows:

"Q. (By Mr. Lucas, continuing) Will you go into the Detroit system, Doctor, on transportation.

"A. Answering it generally, counsellor, my answer would be that the intact bussing is the practice of transporting classrooms of children intact from one school to another and leaving them intact when they are educated at the receiving school.

"Q. Doctor, when such transportation occurs from a school which is 90 percent or more black to a school which is predominantly a white school, what effect, if any, does this have in terms of racial segregation on those children?

"A. This would lead to what we call classroom segregation or segregation within a particular school. It could be sometimes resegregation, but essentially it is a segregated situation within a school which could be segregated or not segregated generally.

"Q. Doctor, in your experience with school segregation and school desegregation plans, is this a technique which you have had to deal with in the past?

"A. On occasion, yes, sir.

"Q. Doctor, did you examine data or relevant information with respect to the transportation practices in the Detroit school system in connection with this type of bussing, intact bussing?

"A. Yes, sir.

"Q. What did your examination reveal, Doctor?

"A. It is my understanding from the data that there was intact bussing generally in the late '50's, as I said, and early '60's.

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"Q. How did that intact transportation operate, Doctor?

"A. It involved transporting classrooms in whole from one school to another receiving school and at the receiving school the classrooms were kept intact for instructional purposes.

"Q. Was this policy changed at any time, Doctor, as far as you know?

"A. It is my understanding it was changed in the middle '60's but I don't remember the exact date.

"Q. What would the change be, Doctor? What type of bussing would result in terms of relieving overcrowding?

"A. You simply gather children up on a geographical basis and transport them and assign them at random to whatever grade they are in the receiving school rather than keeping them in an intact classroom."

Segregating children by race within schools has been held repeatedly to be unconstitutional. *Jackson* v. *Marvell School District No. 22*, 445 F.2d 211, 212 (8th Cir. 1970); *Johnson* v. *Jackson Parish School Board*, 423 F.2d 1055 (5th Cir. 1970).

The record indicates that in at least one instance Detroit served a suburban school district by contracting with it to educate its black high school students in a Detroit high school which was overwhelmingly black by transporting them away from nearby suburban white high schools and past Detroit high schools which were predominately white.

The District Judge found on this score that for years black children in the Carver School District were assigned to black schools in the inner city because no white suburban district (or white school in the city) would take the children.

This finding is supported by the testimony of Detroit School Superintendent Drachler, which follows:

"Q. When was the Carver District in existence as a separate entity?

"A. The Carver District? The Carver is not in Detroit.

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"Q. Is it a separate school district whose students attended some Detroit high schools, in particular Northern?

"A. Oh, I see what you're referring to. I am told that back in '57, '58, at that time I was not in Central Office, there were some students from Carver District who did not have a place for adequate high school facilities. An arrangement was made with Detroit for the Carver students to come in on buses and go to Northern High School. Now, the nearest school to Carver was Mumford at the time. And they did go past Mumford towards Northern.

"Q. Is Carver a black district?

"A. Yes, black and very poor.

"Q. Has Carver District subsequently merged with Detroit?

"A. Oak Park.

"Q. With Oak Park?

"A. That's right.

"Q. And at that time the transportation was terminated?

"A. That's right. By the way, as a result of those youngsters coming, there was a rumor spread that Detroit children were being bussed, say, from the Higginbotham, which is north — Higginbotham area which is north of Mumford High School area but in Detroit, that they were being bussed to Northern, too, because they were black students, people saw black students from the Eight Mile area coming down. But to the best of my knowledge these were outside students.

"Q. There were black children being bussed to Higginbotham, weren't they?

"A. There were black children being bussed to Higginbotham.

"Q. From Angell?

"A. From Angell past some white schools. And when the issue was brought to Doctor Brownell's attention by me in about '59 or '60 — there were a series of instances

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like that. There was the Angell, there was from the military fort in the southwest, they were bussing their own children up to the Noble, and Doctor Brownell, as soon as it was brought to his attention, abolished that as well as the optional areas.

"Q. Was this so-called intact bussing, that is a class being brought as a unit?

"A. Generally speaking, yes. That policy of changing to geographic bussing occurred about '62-'63 as a result of the Equal Education Opportunities Committee.

"Q. Was all of the bussing done in the City of Detroit of an intact nature until the Equal Opportunities study?

"A. To the best of my knowledge it was. I know when my children were being bussed, they were bussed intact."

(2) Optional Areas.

The record demonstrates that in many instances when neighborhoods in Detroit began to experience some immigration of black families, it was Board of Education policy to create optional attendance zones, thereby allowing white students to change schools to all white or predominately white schools, generally located farther toward the city limits. For many years the record indicates this practice to have been pervasive. It continued in at least one instance up to the 1970-71 school year.

As to optional attendance zones, the District Judge found:

"During the decade beginning in 1950 the Board created and maintained optional attendance zones in neighborhoods undergoing racial transition and between high school attendance areas of opposite predominant racial compositions. In 1959 there were eight basic optional attendance areas affecting 21 schools. Optional attendance areas provided pupils living within certain elementary areas a choice of attendance at one of two high schools. In addition there was at least one optional area either created or existing in 1960 between two junior high

schools of opposite predominant racial components. All of the high school optional areas, except two, were in neighborhoods undergoing racial transition (from white to black) during the 1950s. The two exceptions were: (1) the option between Southwestern (61.6% black in 1960) and Western (15.3% black); (2) the option between Denby (0% black) and Southeastern (30.9% black). With the exception of the Denby-Southeastern option (just noted) all of the options were between high schools of opposite predominant racial compositions. The Southwestern-Western and Denby-Southeastern optional areas are all white on the 1950, 1960 and 1970 census maps. Both Southwestern and Southeastern, however, had substantial white pupil populations, and the option allowed whites to escape integration. The natural, probable, foreseeable and actual effect of these optional zones was to allow white youngsters to escape identifiably 'black' schools. There had also been an optional zone (eliminated between 1956 and 1959) created in 'an attempt . . . to separate Jews and Gentiles within the system,' the effect of which was that Jewish youngsters went to Mumford High School and Gentile youngsters went to Cooley. Although many of these optional areas had served their purpose by 1960 due to the fact that most of the areas had become predominantly black, one optional area (Southwestern-Western affecting Wilson Junior High graduates) continued until the present school year (and will continue to effect 11th and 12th grade white youngsters who elected to escape from predominantly black Southwestern to predominantly white Western High School). Mr. Henrickson, the Board's general fact witness, who was employed in 1959 to, *inter alia*, eliminate optional areas, noted in 1967 that: 'In operation Western appears to be still the school to which white students escape from predominantly Negro surrounding schools.' The effect of eliminating this optional area (which affected only 10th graders for the 1970-71 school year) was to decrease Southwestern from 86.7% black in 1969 to 74.3% black in 1970." 338 F.Supp. at 587-88.

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From these facts the District Judge arrived at the following legal conclusion:

> "7. The Board's policy of selective optional attendance zones, to the extent that it facilitated the separation of pupils on the basis of race, was in violation of the Fourteenth Amendment. Hobson v. Hansen, D.C., 269 F.Supp. 401, aff'd sub nom., Smuck v. Hobson, 408 F.2d 175. [(D.C. Cir. 1969)]." 338 F.Supp. at 593.

Additional support for the District Judge's legal conclusion includes: *United States* v. *Texas Education Agency*, — F.2d — (5th Cir. 1972); *Northcross* v. *Board of Education of Memphis*, 333 F.2d 661, 665-66 (6th Cir. 1964) (different but analogous situation); *United States v. Board of School Commissioners of Indianapolis*, 332 F. Supp. 655, 668 (S.D. Ind. 1971); *Spangler* v. *Pasadena City Board of Education*, 311 F.Supp. 501, 502 (C.D. Cal. 1970).

The effect of use of optional zones was described in Dr. Foster's testimony:

> "The first method or technique I might cite that is used to maintain segregation would be the use of optional zones.
>
> "Would it be possible for me to step to the board to illustrate?
>
> "Q. Please do.
>
> (The witness proceeded to the blackboard.)
>
> "A. Optional zones are sometimes also referred to as dual zones or dual overlapping zones. I think it will be easier for me to illustrate this briefly.
>
> (The witness drew a sketch on the board.)
>
> "A. If you have, let's say, two high school districts, District X and District Y, frequently when you set up an optional zone you carve the zone out of one district, occasionally two, but assume we carve it out of District Y and the children in this optional zone are then permitted to go to either high school X or high school Y, this becomes in a sense an overlapping zone because

if we refer to the boundaries of school District X at this point it not only includes the previous boundary but also takes in the optional zone.

"District Y in turn would include its previous boundaries, also including the optional zone. I think this may explain the origin of the connotation of the word 'overlapping'.

"Essentially optional zones are set up for two or three reasons, one is to allow white students or black students the option of attending one of the two attendance areas which make up the boundaries of the zone and another is for, occasionally for religious purposes to provide alternatives for persons of different religions. Sometimes these are set up for socio-economic reasons and I have on occasion seen them set up by boards of superintendents as political gimicks in order to help pass a bond issue or one thing or another or a school board or superintendent will set up temporary optional zones as a favor to certain constituents in return for assistance in helping the school board with one thing or another.

"I think in the frame work in which we operate they are used primarily for maintaining segregated patterns.

• • •

"Q. Dr. Foster, have you made a study and analysis of optional zones in the Detroit school system?

"A. Yes, I have."

Dr. Foster's analysis of the purpose and effect of each optional zone in existence in the Detroit School District is exemplified in his testimony on the Mackenzie-Central option.

"Q. Doctor Foster, do you have an opinion as to the administrative use of the optional attendance zone in 1960 between and prior to that in Mackenzie-Central area?

"A. Yes. I think it was used primarily — you mean as to the purpose of it?

"Q. Well, as to whether or not it had any administrative value that you know of. Doctor, aside from race?

"A. In terms of assignment I can see no advantage to it.

• • •

"Q. Do you have an opinion as to its use in terms of segregation or desegregation, Doctor Foster?

"A. In my opinion it was used as an optional zone to allow whites during the period it was in existence in the '50's and also until such time as it was done away with in 1962 to be assigned to predominantly white Mackenzie High School.

"Q. Doctor Foster, from your examination of the 1950 census and in turn the 1960 census exhibits, do you have an opinion as to the effect of such an optional zone on the community, residence pattern in the community?

• • •

"A. Community people and residents in a situation such as this generally have a perception that there is something wrong with their school, that the whites need an optional zone to get out into a less black situation and, therefore, this increases their perception of racial isolation and, in fact, physical containment.

"Q. Does this have an effect, Doctor, in terms of the residence pattern? I believe you testified in 1950 the optional area was entirely white or zero to 4.9 per cent white.

• • •

"A. In my opinion this tends to increase the instability of the community because they generally feel this is an ad hoc temporary interim situation and it increases white flight in this sort of situation.

• • •

"Q. Doctor Foster, does the use of these techniques in some areas have an effect in terms of the perception of the community of schools besides the actual two schools to which the option was involved?

• • •

"A. Thank you. Yes, I think the perception is not only

of rank and file community residents, but people of considerable influence in the community, along with School Board administration people, School Board members, School Board officials. In many cases they have substantiated this perception that I have recounted; that the optional zones did lead to greater pupil segregation and a feeling of frustration that the school authorities were not doing what was called for in terms of desegregation, and it had a generally debilitating effect on the image of the schools as far as all of these groups were concerned."

Mr. Henrickson, defendant School Board's principal witness and divisional director of planning and building studies in the School Housing Division, did not deny the discriminatory effect of at least some of these optional zones.

"Q. In 1959 optional areas frustrated integration, did they not?

"MR. BUSHNELL: Objection to the form of the question.

"THE COURT: He may answer.

"A. Some of these areas in 1959 had no effect whatever with movement of black or white students. They were either all black or all white. Some of them such as the Western-Southwestern area can be said to have frustrated integration and continued over the decade."

(3) Building Construction.

The District Judge found and the record contains evidence that the Detroit Board of Education practices in school construction generally tended to have segregative effect; the great majority of schools were built in either overwhelming all black or all white neighborhoods so that the new schools opened as one race schools.

The District Judge's school construction findings were as follows:

"In 1966 the defendant State Board of Education and Michigan Civil Rights Commission issued a Joint Policy Statement on Equality of Educational Opportunity, requiring that

> 'Local school boards must consider the factor of racial balance along with other educational considerations in making decisions about selection of new school sites, expansion of present facilities . . . . Each of these situations presents an opportunity for integration.'

Defendant State Board's 'School Plant Planning Handbook' requires that

> 'Care in site locations must be taken if a serious transportation problem exists or if housing patterns in an area would result in a school largely segregated on racial, ethnic or socio-economic lines.'

The defendant City Board has paid little heed to these statements and guidelines. The State defendants have similarly failed to take any action to effectuate these policies. Exhibit NN reflects construction (new or additional) at 14 schools which opened for use in 1970-71; of these 14 schools, 11 opened over 90% black and one opened less than 10% black. School construction costing $9,222,000 is opening at Northwestern High School which is 99.9% black, and new construction opens at Brooks Junior High, which is 1.5% black, at a cost of $2,500,000. The construction at Brooks Junior High plays a dual segregatory role: not only is the construction segregated, it will result in a feeder pattern change which will remove the last majority white school from the already almost all-black Mackenzie High School attendance area.

"Since 1959 the Board has constructed at least 13 small primary schools with capacities of from 300 to 400 pupils. This practice negates opportunities to integrate, 'contains' the black population and perpetuates and compounds school segregation." 338 F.Supp. at 588-89.

Other cases in which such findings have been held to constitute a de jure act of segregation include: *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 21 (1971); *Cisneros* v. *Corpus Christi Independent School Dist.*, — F.2d — (5th Cir. 1972), *cert. applied for*, 41 U.S.L.W. 3255 (Oct. 31, 1972); *Kelly* v. *Guinn*, 456 F.2d 100 (9th Cir. 1972), *petition for cert. filed*, 41 U.S.L.W. 3114 (U.S. Aug. 28, 1972); *Davis* v. *School District of Pontiac*, 443 F.2d 573, 576 (6th Cir.), *cert. denied* 402 U.S. 913 (1971); *Sloan* v. *Tenth School District*, 433 F.2d 587, 590 (6th Cir. 1970); *United States* v. *Board of Education of Tulsa*, 429 F.2d 1253, 1259 (10th Cir. 1970); *Brewer* v. *School Board of Norfolk*, 397 F.2d 37, 42 (4th Cir. 1968); *United States* v. *Board of Public Instruction*, 395 F.2d 66, 69 (5th Cir. 1968); *Kelley* v. *Altheimer, Arkansas Public School Dist. No. 22*, 378 F.2d 483, 496-97 (8th Cir. 1967); *Johnson* v. *San Francisco Unified School District*, 339 F.Supp. 1315, 1326, 1341 (N.D. Cal. 1971); *United States* v. *Board of School Commissioners of Indianapolis*, 332 F.Supp. 655 (S.D. Ind. 1971); *Spangler* v. *Pasadena City Board of Education*, 311 F.Supp. 501, 522 (C.D. Cal. 1970); *United States* v. *School District 151*, 286 F.Supp. 786, 798 (N.D. Ill.), *aff'd*, 404 F.2d 1125 (7th Cir. 1968); *Lee* v. *Macon County Board of Education*, 267 F.Supp. 458, 472 (M.D. Ala.), *aff'd per curiam sub nom.*, *Wallace* v. *United States*, 389 U.S. 215 (1967).

Record evidence pertaining to Detroit Board of Education building construction practices and their results include:

> "Q. Doctor Foster, I show you a document in evidence, Plaintiff's Exhibit 70. I direct your attention to page 15 of the exhibit. The exhibit is School Planning Handbook, Bulletin 412, revised, January, 1970, Michigan Department of Education. Directing your attention to Chapter 2, the School Site, and the last full paragraph in the left-hand column on page 15, Doctor, would you read that paragraph?
>
> "A. 'Care in site location must be taken if a serious transportation problem exists or if housing patterns in

an area would result in a school largely segregated on racial, ethnic or socio-economic lines.'

"Q. Doctor, would you step down to the map, please? Do you have a copy, Doctor, of Plaintiff's Exhibit 79?

"A. Yes, I do.

"Q. Doctor, would you examine Plaintiff's Exhibit 153, which shows new school construction, 1960 to 1970? Perhaps you had better step back here. Doctor, the black squares on here represent schools opening 80 to 100 per cent black in pupil enrollment. Would you direct your attention to the Drew Junior High School on the map and examine the exhibit and tell me when Drew was opened?

"A. According to the exhibit, the Drew Junior High School was opened in 1970.

"Q. And what was it opened as in terms of its enrollment, Doctor?

"A. 1,587 students.

"Q. And its percent black?

"A. 95 per cent black.

"Q. And the Eileen Primary School, Doctor, can you locate it on the map?

"A. The Eileen Primary is in the Cooley High School zone, I believe.

"Q. And when did it open, Doctor?

"A. 1970.

"Q. And what was its enrollment and its pupil population in terms of black?

"A. 333 students. The per cent black was 99.1.

"Q. Would you examine the map and locate the E. M. Turner Primary?

"A. Yes.

"Q. What year was that opened, Doctor?

"A. The Turner Primary was opened in 1969.

"Q. And its enrollment of pupil population?

"A. 362 pupils, 97.5 percent black.

"Q. Can you find the Stewart School on there, Doctor?

"A. The Stewart School is in the same general area as Turner, a little to the south.

"Q. What year was it opened?

"A. 1970.

"Q. Its population and percent black?

"A. 766 enrollment, 98.8 percent black.

"Q. Marxhausen Primary, Doctor, can you locate that on the map?

"A. Marxhausen is in the Finney zone.

"Q. Is that near or far away from the A. L. Holmes School, Doctor?

"A. As I remember, rather close to the Holmes School.

"Q. Can you locate the Holmes School with reference to that?

"A. The Holmes School is the next one to the northwest.

"Q. And what was its pupil population when it opened?

"A. Marxhausen was opened in 1970 with a pupil population of 302, 92.4 percent black.

"Q. Would you locate Mack Primary, Doctor?

"A. Mack Primary is also in the Finney zone.

"Q. And when did it open?

"A. Mack opened in 1970 with an enrollment of 173, 98.8 percent black.

"Q. Could you locate the Angell Primary area, Doctor?

"A. The Angell area is in the Northwestern attendance zone.

"Q. And what was its enrollment and percent black?

"A. Angell was 1,282 students when it opened in 1970. The percent black was 99.9

"Q. Is there an asterisk by that particular school, Doctor?

"A. On the exhibit?

"Q. Yes.

"A. Yes, there is.

"Q. Would you refer to the cover and tell us what that asterisk indicates?

"A. It says, 'The racial count data included in existing school with the same name.'

"Q. Can you locate the Stark School, Doctor?

"A. The Stark School is in the Southeastern zone.

"Q. And what was its enrollment?

"A. The enrollment was 822 when it opened in 1969.

"Q. And the percent black?

"A. 98.4 percent black.

"Q. Can you locate the new King Senior High School, Doctor?

"A. The new King Senior High School?

"Q. Yes.

"A. Here.

"Q. When did it open?

"A. It opened in 1968.

"Q. What was its enrollment?

"A. 1,897 pupils.

"Q. And its percent black?

"A. 98.8 percent black.

"Q. Can you locate the Field Annex, Doctor?

"A. Just to the northeast of King, the Field Annex.

"Q. And what was its enrollment?

"A. 461.

"Q. Its per cent black?

"A. 90.5 per cent black.

"Q. Can you locate the Glazer School, Doctor Foster?

"A. The Glazer School is in the Central zone.

"Q. And when did it open?

"A. In 1967.

"Q. And what was its enrollment, Doctor?

"A. 850 students.

"Q. What was its per cent black?

"A. 100 per cent black."

Similar testimony was given with respect to the Stevenson, Cortez, Beaubien, Sander, St. Clair Annex, Murray, Kettering, Krolik, Joy, Tendler, Belleville, McGraw, Knudsen, Keidan, Jamieson, Butzel, Woodward, Tendler and Norvell Schools. White schools built to accommodate white residential areas in-

cluded Fox, Lessenger, Murphy, Taft, Fleming, Earhart, Reeves, Brooks and McKenny Annex.

"Q. Thank you, Doctor.

"Doctor Foster, from your examination of the pattern of construction in this school system, 1960 to 1970, do you have an opinion as to the effect of that pattern of construction on segregation in the Detroit School System?

"A. My opinion is that construction practices were followed in such a way as to increase segregation. I say this because of the large number of schools that were opened that were either all black or all white or with a disproportionate number of one race or the other upon opening.

• • •

"Q. (By Mr. Lucas) Does the location of a school in a particular place have a long term effect on a school system?

"A. In terms of the nature of the pupils assigned to the school, do you mean?

"Q. Yes, sir.

"A. Yes, it does.

"Q. Are there alternatives in schoolhouse construction which can or should be considered by a school district in terms of affecting the racial composition of student bodies?

"A. In terms of site selection there are, yes.

"Q. What are some of the alternatives which can or should be utilized, in your opinion, Doctor?

"A. It is customary in this day and age to consider the problem of integration or segregation very carefully in selecting sites for school buildings and, well, this was pointed out, I believe, in the bit I read from the Michigan State Department.

"Q. What effect in terms of perception of the community does it have when a school is opened with an overwhelming enrollment of one race or the other?

"A. Generally the community perceives, in my opinion, that the school has been thought of as being, going to be an all white school or all black school and in either case generally that it is racially isolated."

(B) The constitutional violations found to have been committed by the State of Michigan.

(1) Under Michigan law, M.S.A. § 15.1961, school building construction plans must be approved by the State Board of Education. Prior to 1962 the State Board also had statutory authority to supervise school site selection. The proofs concerning the effect of Detroit's school construction program are therefore largely applicable to show State responsibility for the segregatory results.

(2) During the critical years covered by this record the State of Michigan discriminated against Detroit by allowing the Detroit School District a capital improvement bonding authority of only two percent as compared to five per cent for all other school districts in the State up to the year 1969.

(3) During the critical years covered by this record the School District of Detroit was denied any allocation of State funds for pupil transportation, although such funds were made generally available to all students who lived over a mile and a half from their assigned schools in rural outstate Michigan, and although some suburban districts continued to receive State transportation money because of a "grandfather clause" which continues their status of some years ago. See S.B. 1269, REG. SESSION, Sec. 71(2)(a)(b) (1972).

(4) In 1970 the Detroit School Board undertook implementation of its April 7 desegregation plan applicable to its high schools. On meeting considerable resistance thereto, it nonetheless proceeded. At that point the State Legislature intervened by Act 48 of Public Acts of 1970 specifically overruling the Detroit Board of Education's desegregation plan. While this statute has since been invalidated by judgment of

this court, its contribution to preventing desegregation and to continuing and increasing segregation of the Detroit school system cannot be overlooked.

(5) Finally, the cross-district transportation of black high school students from the Carver School, located in Ferndale school district, to a black high school in Detroit could not have taken place without the approval, tacit or express, of the State Board of Education. (See *supra* pp. 27-29)

The District Judge's findings pertaining to constitutional violations by the State of Michigan are as follows:

> "The State and its agencies, in addition to their general responsibility for and supervision of public education, have acted directly to control and maintain the pattern of segregation in the Detroit schools. The State refused, until this session of the legislature, to provide authorization or funds for the transportation of pupils within Detroit regardless of their poverty or distance from the school to which they were assigned, while providing in many neighboring, mostly white, suburban districts the full range of state supported transportation. This and other financial limitations, such as those on bonding and the working of the state aid formula whereby suburban districts were able to make far larger per pupil expenditures despite less tax effort, have created and perpetuated systematic educational inequalities.
>
> "The State, exercising what Michigan courts have held to be is 'plenary power' which includes power 'to use a statutory scheme, to create, alter, reorganize or even dissolve a school district, despite any desire of the school district, its board, or the inhabitants thereof,' acted to reorganize the school district of the City of Detroit.
>
> "The State acted through Act 48 to impede, delay and minimize racial integration in Detroit schools. The first sentence of Sec. 12 of the Act was directly related to the April 7, 1970 desegregation plan. The remainder of the section sought to prescribe for each school in the eight districts criterion of 'free choice' (open enrollment) and 'neighborhood schools' ('nearest school priority accep-

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tance'), which had as their purpose and effect the maintenance of segregation.

"In view of our findings of fact already noted we think it unnecessary to parse in detail the activities of the local board and the state authorities in the area of school construction and the furnishing of school facilities. It is our conclusion that these activities were in keeping, generally, with the discriminatory practices which advanced or perpetuated racial segregation in these schools." 338 F. Supp. at 589.

The District Judge arrived at the following legal conclusions:

"11. Under the Constitution of the United States and the constitution and laws of the State of Michigan, the responsibility for providing educational opportunity to all children on constitutional terms is ultimately that of the state. Turner v. Warren County Board of Education, D.C., 313 F.Supp. 380; Art. VIII, §§ 1 and 2, Mich. Constitution; Daszkiewicz v. Detroit Bd. of Ed. of City of Detroit, 301 Mich. 212, 3 N.W.2d 71.

"12. That a state's form of government may delegate the power of daily administration of public schools to officials with less than state-wide jurisdiction does not dispel the obligation of those who have broader control to use the authority they have consistently with the constitution. In such instances the constitutional obligation toward the individual school children is a shared one. Bradley v. Sch. Bd. of City of Richmond, D.C., 51 F.R.D. 139, 143.

"13. Leadership and general supervision over all public education is vested in the State Board of Education. Art. VIII, § 3, Mich. Constitution of 1963. The duties of the State Board and superintendent include, but are not limited to, specifying the number of hours necessary to constitute a school day; approval until 1962 of school sites; approval of school construction plans; accreditation of schools; approval of loans based on state aid funds; review of suspensions and expulsions of individual students for misconduct [Op.Atty.Gen., July 7, 1970, No.

4705]; authority over transportation routes and disbursement of transportation funds; teacher certification and the like. M.S.A. 15.1023(1), M.C.L.A. § 388.1001. State law provides review procedures from actions of local or intermediate districts (see M.S.A. 15.3442, M.C.L.A. § 340.442), with authority in the State Board to ratify, reject, amend or modify the actions of these inferior state agencies. See M.S.A. 15.3467; 15.1919(61); 15.1919(68 b); 15.2299(1); 15.1961; 15.3402, M.C.L.A. §§ 340.467, 388.621, 388.628(a), 388.681, 388.851, 340.402; Bridgehampton School District No. 2 Fractional of Carsonville, Mich. v. Supt. of Public Instruction, 323 Mich. 615, 36 N.W.2d 166. In general, the state superintendent is given the duty '[t]o do all things necessary to promote the welfare of the public schools and public educational instructions and provide proper educational facilities for the youth of the state.' M.S.A. 15.3252, M.C.L.A. § 340.252. See also M.S.A. 15.2299(57), M.C.L.A. § 388.717, providing in certain instances for reorganization of school districts.

"14. State officials, including all of the defendants, are charged under the Michigan constitution with the duty of providing pupils an education without discrimination with respect to race. Art. VIII, § 2, Mich. Constitution of 1963. Art. I, § 2, of the constitution provides:

> 'No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.'" 338 F.Supp. at 593-94

Some of the evidence in this record supporting the District Judge's findings of State acts which discriminatorily affected the Detroit Board of Education and contributed to pupil segregation follows. The State statutory scheme of support of transportation for school children directly discriminated against

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Detroit. Dr. John W. Porter, the State Superintendent of Public Instruction in Michigan, testified as to the State transportation aid formula:

"Q. (By Mr. Lucas) Dr. Porter, does the State pay the cost of pupil transportation in the State of Michigan?

"A. The State pays roughly 75 percent of the cost. Last year the appropriation was $29 million.

"Q. Do you know what percent of the school children in the State of Michigan are transported to the school at public expense?

"A. Yes, I do. 40 percent of all students in Michigan are transported. That equates out to about 833,000 students last year.

"Q. Dr. Porter, is there some formula in terms of distance which makes a child eligible for transportation that would be aided by the state?

"A. Yes. It is a very complicated formula that 197 computations, and we are in the process right now of reducing this —

"Q. (Interposing) You mean the financial formula is complicated. But, in terms of distance from his home to the school —

"A. A mile and a half outside the city limits. Until this year the legislature amended the Act based upon the recommendations of the State Board of Education to allow for in-city transportation which we had never had before. The legislature did not appropriate funds for that. So, now the funds that are now used are basically for rural areas and suburban areas where the students live a mile and a half from the school.

"Q. When you say 'city,' is there some limitation? For instance, would Grosse Pointe, Harper Woods, areas like that that surround the City of Detroit, are they eligible for transportation?

"A. In the in-city. But, if the students come across the city boundary lines they live more than a mile and a half, which is quite prevalent throughout the state, then they are eligible for the funds.

"Q. Well, I think my question may have been confusing. Is there some type of city — is it just anyplace incorporated as a city that is differentiated from the rural areas, or certain cities elegible for this state aid at the present time and receive the funds —

"THE COURT: I think what Mr. Lucas is trying to get at is whether under the old practice whether any city has ceased state aid for transportation within the city.

"A. Yes, we have a number of instances where the city would be receiving aid for transportation, because the law says that if the bus in order to get the students to the school crosses outside of the city boundary, the city is then eligible for aid, and we, and we have a number of instances where that exists.

"THE COURT: In other words, where the student originates his ride outside the city limits transportation is assisted?

"A. That's right, or where the student lives in the city but the bus has to go outside of the city and come back he is also eligible. This, however, does not negate local city officials, school board officials from providing transportation. There is no prohibition against that.

"Q. (By Mr. Lucas) You said the legislature changed the law but didn't provide the money. Now, they are eligible for state aid but it is unfunded now, is that what you are saying?

"A. The law was changed last year to permit in-city bus transportation but in changing the law the legislature said our department had to disburse the funds to the eligible existing areas which meant that since they did not increase the amount of funds appropriated we could not provide for in-city transportation.

"Q. If a child lives in the city and lives more than a mile and a half from the school to which he is assigned he may not receive the state aid because it is unfunded at the present time?

"A. That is correct.

"Q. But if he lives the same distance away and lived

outside the City of Detroit, for example, then he could receive state aide?

"A. That is correct, or any other area."

The record demonstrates that the State also discriminated against the Detroit school system by limiting Detroit's capital improvement bonding authority to two per cent of assessed valuation until 1969. This compares with a bonding authority of five per cent provided for other school districts.

"Q. Mr. Brown, one other question, sir. There has been a good deal of discussion in the course of this trial about bonding authority and use made of the funds that are derived from that authority. I would like to ask you several questions, sir, about that and see if we can't get it all in order. Has the district — and I ask you this question on the basis of your experience with the State Board of Education as well as being secretary and business manager of the Detroit district — has the Detroit Board of Education always had bonding authority so that bonds could be issued without vote of the people?

"A. Has it always had?

"Q. Yes, sir, if you know.

"A. I do not know always. It has for many years.

"Q. What was the level of that bonding authority?

"A. It went from 2 percent —

"Q. I am talking about originally from the time you first knew about it. It was a 2 percent —

"A. 2 percent of equalized valuation that could be levied by the Board, then it was changed.

"Q. All right. Now, in order to get more than 2 percent of the equalized valuation of the property within a district what did the Board have to do?

"A. The Board of Education had to take the matter to the taxpaying electors of the city to get approval to bond the district beyond that capacity.

"Q. Who is eligible to vote in those bonding elections at that time?

"A. At that time the taxpaying electors of the district.

"Q. You mean by that the property owners?

"A. Yes.

"THE COURT: Real estate property owners?

"A. Yes.

"Q. You indicate that that 2 percent authority was increased. When and how much?

"A. I'm sorry, I can't tell you the exact year. It was increased by 1 percent. It went from 2 to 3, but I can't quote the year.

"Q. How did that authority of 3 percent compare to the authority granted all other districts in the state?

"A. It was less by 2 percent. In other words, all other districts in the state had the authority to bond up to 5 percent of the state equalized valuation while Detroit was limited to 3.

"THE COURT: This is true at a time when Detroit only had a 2 percent authority?

"A. This is correct.

"Q. Now, sir, when was the authority increased from 3 percent?

"A. During the last session of the Legislature; not the current one but the one immediately preceding so that for this year we have the 5 percent authority that the other districts now have.

"Q. Has that extra authority been utilized by the district?

"A. No.

"Q. As yet?

"A. Not as yet. The plans are being made and we have to carry forward quite a program of determining priorities and so forth, so it has not been used yet.

"Q. So the bonding authority currently being used by the district is the authority that it had before the 1970 session of the Legislature?

"A. This is correct.

"Q. What is the state of that prior bonding authority? Is it all exhausted or is there some reserve still available?

"A. It is exhausted to this extent. The Board of Education has adopted a program which uses all of that authority. We have presently before the Municipal Finance Commission in Lansing the last amount of that authority and in the amount of $22,950,000. We have not as of today received approval of that, but the Board's program calls for the full authority."

The clearest example of direct State participation in encouraging the segregated condition of Detroit public schools, however, is that of school construction in Detroit and the surrounding suburban areas. Until 1962 the State Board of Education had direct statutory control over site planning for new school construction. During that time, as was pointed out above, the State approved school construction which fostered segregation throughout the Detroit Metropolitan area (See *supra* pp. 34-40). Since 1962 the State Board has continued to be involved in approval of school construction plans.

IV. Conclusion as to Constitutional Violations

The discriminatory practices on the part of the Detroit School Board and the State of Michigan revealed by this record are significant, pervasive and causally related to the substantial amount of segregation found in the Detroit school system by the District Judge.

There is, of course, a significant distinction between this record and those school segregation cases which have flooded the courts since *Brown* v. *Topeka, supra.* This distinction is that Michigan has never enforced segregation by State laws which provided for separate black and white school systems, as was the pattern prior to 1954 in many other States. As a consequence, there always have been some instances of actual school integration in Detroit and still more instances of token school integration.

Defendants seek to insulate themselves from remedial action by federal courts by pointing to the long standing public policy

of Michigan, as expressed in its statutes, of integration of public education. However, this court is not blind to the fact that governments can act only through the conduct of their officials and employees and that unconstitutional actions of individuals can be redressed. *See, e.g., Clemons* v. *Board of Education*, 228 F.2d 853 (6th Cir.), *cert. denied*, 350 U.S. 1006 (1956).

The record in this case amply supports the findings of the District Court of unconstitutional actions by public officials at both the local and State level.

Historically de jure segregation has come about through statutory command explicitly establishing dual school systems. Michigan's declared public policy is urged as a controlling distinction. No matter how important this distinction may be, it does not in our judgment negate the de jure segregation findings entered in this case by the District Judge. The record contains substantial evidence to support the finding of the District Court that the segregation of the Detroit public schools, however rooted in private residential segregation, also was validated and augmented by the Detroit Board of Education and Michigan State Board action of pervasive influence through the system. Even if the segregation practices were a bit more subtle than the compulsory segregation statutes of Southern States, they were nonetheless effective. There should not be one law for the South and a different one for the North.

It is our view that the findings of fact pertaining to actions of the Detroit Board of Education and the State of Michigan which caused or contributed to Detroit school segregation are not clearly erroneous and that the District Court was therefore authorized and required to take effective measures to desegregate the Detroit Public School System. *Brown* v. *Board of Education of Topeka [I]*, 347 U.S. 483 (1954); *Brown* v. *Board of Education of Topeka [II]*, 349 U.S. 294 (1955); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S.

1 (1971); *Davis* v. *Board of Commissioners*, 402 U.S. 33 (1971).

This record contains a substantial volume of testimony concerning local and State action and policies which helped produce residential segregation in Detroit and in the metropolitan area of Detroit. In affirming the District Judge's findings of constitutional violations by the Detroit Board of Education and by the State defendants resulting in segregated schools in Detroit, we have not relied at all upon testimony pertaining to segregated housing except as school construction programs helped cause or maintain such segregation.

V. The District Court's Ruling that no Detroit Only Desegregation Plan is Possible

Subsequent to the entry of its findings of constitutional violations on the part of the Detroit Board of Education and the State of Michigan resulting in system-wide segregation of Detroit public schools, the District Court requested plans for Detroit only desegregation. His findings of fact pertaining to these plans warrant repetition in full:

"FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON
DETROIT-ONLY PLANS OF DESEGREGATION

"In accordance with orders of the court defendant Detroit Board of Education submitted two plans, limited to the corporate limits of the city, for desegregation of the public schools of the City of Detroit, which we will refer to as Plan A and Plan C; plaintiffs submitted a similarly limited plan, which will be referred to as the Foster Plan. Hearings were had on said plans on March 14, 15, 16, 17 and 21, 1972. In considering these plans the court does not limit itself to the proofs offered at the hearing just concluded; it considers as part of the evidence bearing on the issue (*i.e.*, City-Only Plans) all proofs submitted in the case to this point, and it specifically incorporates herein by reference the Findings and Conclusions

contained in its "Ruling on Issue of Segregation," filed September 27, 1971.

"The court makes the following factual findings:

"PLAN A.

"1. The court finds that this plan is an elaboration and extension of the so-called Magnet Plan, previously authorized for implementation as an interim plan pending hearing and determination on the issue of segregation.

"2. As proposed we find, at the high school level, that it offers a greater and wider degree of specialization, but any hope that it would be effective to desegregate the public schools of the City of Detroit at that level is virtually ruled out by the failure of the current model to achieve any appreciable success.

"3. We find, at the Middle School level, that the expanded model would affect, directly, about 24,000 pupils of a total of 140,000 in the grades covered; and its effect would be to set up a school system within the school system, and would intensify the segregation in schools not included in the Middle School program. In this sense, it would increase segregation.

"4. As conceded by its author, Plan A is neither a desegregation nor an integration plan.

"PLAN C.

"1. The court finds that Plan C is a token or part-time desegregation effort.

"2. We find that this plan covers only a portion of the grades and would leave the base schools no less racially identifiable.

"PLAINTIFFS' PLAN

"1. The court finds that Plaintiffs' Plan would accomplish more desegregation than now obtains in the system, or would be achieved under Plan A or Plan C.

"2. We find further that the racial composition of the student body is such that the plan's implementation

would clearly make the entire Detroit public school system racially identifiable as Black.

"3. The plan would require the development of transportation on a vast scale which, according to the evidence, could not be furnished, ready for operation, by the opening of the 1972-73 school year. The plan contemplates the transportation of 82,000 pupils and would require the acquisition of some 900 vehicles, the hiring and training of a great number of drivers, the procurement of space for storage and maintenance, the recruitment of maintenance and the not negligible task of designing a transportation system to service the schools.

"4. The plan would entail an overall recasting of the Detroit school system, when there is little assurance that it would not have to undergo another reorganization if a metropolitan plan is adopted.

"5. It would involve the expenditure of vast sums of money and effort which would be wasted or lost.

"6. The plan does not lend itself as a building block for a metropolitan plan.

"7. The plan would make the Detroit school system more identifiably Black, and leave many of its schools 75 to 90 per cent Black.

"8. It would change a school system which is now Black and White to one that would be perceived as Black, thereby increasing the flight of Whites from the city and the system, thereby increasing the Black student population.

"9. It would subject the students and parents, faculty and administration, to the trauma of reassignments, with little likelihood that such reassignments would continue for any appreciable time.

"In summary, we find that none of the three plans would result in the desegregation of the public schools of the Detroit school district.

"CONCLUSIONS OF LAW

"1. The court has continuing jurisdiction of this action for all purposes, including the granting of effective relief. See Ruling on Issue of Segregation, September 27, 1971.

"2. On the basis of the court's finding of illegal school segregation, the obligation of the school defendants is to adopt and implement an educationally sound, practicable plan of desegregation that promises realistically to achieve now and hereafter the greatest possible degree of actual school desegregation. *Green* v. *County School Board*, 391 U.S. 430; *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19; *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290; *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1.

"3. Detroit Board of Education Plans A and C are legally insufficient because they do not promise to effect significant desegregation. *Green* v. *County School Board*, *supra*, at 439-440.

"4. Plaintiffs' Plan, while it would provide a racial mix more in keeping with the Black-White proportions of the student population than under either of the Board's plans or as the system now stands, would accentuate the racial identifiability of the district as a Black school system, and would not accomplish desegregation.

"5. The conclusion, under the evidence in this case, is inescapable that relief of segregation in the public schools of the City of Detroit cannot be accomplished within the corporate geographical limits of the city. The State, however, cannot escape its constitutional duty to desegregate the public schools of the City of Detroit by pleading local authority. As Judge Merhige pointed out in *Bradley* v. *Richmond*, (slip opinion p. 64):

> 'The power conferred by state law on central and local officials to determine the shape of school attendance units cannot be employed, as it has been here, for the purpose and with the effect of sealing off white conclaves of a racial composition more appealing to the local electorate and obstructing the desegregation of schools. The equal protection clause has required far greater inroads on local government structure than the relief sought here, which is attainable without deviating from state statutory

forms. Compare Reynolds v. Sims, 377 U.S. 533; Gomillion v. Lightfoot, 364 U.S. 339; Serrano v. Priest, 40 U.S.L.W. 2128 (Calif.Sup.Ct. Aug. 30, 1971).

'In any case, if political boundaries amount to insuperable obstacles to desegregation because of structural reason, such obstacles are self-imposed. Political subdivision lines are creations of the state itself, after all.'

"School district lines are simply matters of political convenience and may not be used to deny constitutional rights. If the boundary lines of the school districts of the City of Detroit and the surrounding suburbs were drawn today few would doubt that they could not withstand constitutional challenge. In seeking for solutions to the problem of school segregation, other federal courts have not "treated as immune from intervention the administrative structure of a state's educational system, to the extent that it affects the capacity to desegregate. Geographically or administratively independent units have been compelled to merge or to initiate or continue cooperative operation as a single system for school desegregation purposes."[1]

"That the court must look beyond the limits of the Detroit school district for a solution to the problem of segregation in the Detroit public schools is obvious; that it has the authority, nay more, the duty to (under the circumstances of this case) do so appears plainly anticipated by Brown II,[2] seventeen years ago. While other school cases have not had to deal with our exact situation,[3] the logic of their application of the command of Brown II supports our view of our duty.

"FOOTNOTES

"[1] Bradley v. Richmond, supra [slip opinion p. 68].
"[2] Brown v. Bd. of Ed. of Topeka, 349 U.S. 294, pp. 300-301.
"[3] Haney v. County Board of Education of Sevier County,

410 F.2d 920 (8th Cir. 1969); Bradley v. School Board of the City of Richmond, supra, slip opinion pp. 664-65; Hall v. St. Helena Parish School Board, 197 F.Supp. 649 (E.D. La. 1961), aff'd 287 F.2d 376 (5th Cir. 1961) and 368 U.S. 515 (1962); Lee v. Macon County Bd. of Educ., 448 F.2d 746, 752 (5th Cir. 1971); Gomillion v. Lightfoot, 364 U.S. 339 (1960); Turner v. Littleton-Lake Gaston School Dist., 442 F.2d 584 (4th Cir. 1971); United States v. Texas 447 F.2d 551 (5th Cir. 1971); Lemon v. Bossier Parish School Board, 446 F.2d 911 (5th Cir. 1971)."

The District Judge's finding that no Detroit only plan can achieve desegregation of the Detroit public school system points up another substantial distinction between this case and the classical school segregation case. This record presents a wholly new fact pattern in a school segregation case so far as this Circuit is concerned. *Cf. Bradley v. School Board, City of Richmond*, 338 F.Supp. 67 (E.D. Va. 1971), *rev'd*. 462 F.2d 1058 (4th Cir. 1972), *petition for cert. filed*, 41 U.S.L.W. 3211 (U.S. Oct. 5, 1972); *see Haney v. County Board of Education of Sevier County*, 429 F.2d 364 (8th Cir. 1970). This court never before has been confronted by a finding that any less comprehensive a solution than a metropolitan area plan would result in an all black school system immediately surrounded by practically all white suburban school systems, with an overwhelmingly white majority population in the total metropolitan area.

Relevant to and supportive of the District Judge's findings are these school census figures showing trends toward segregation in the Detroit schools during the last decade:

1960	100 of 251 schools were 90% or more white 71 of 251 schools were 90% or more black 68% of all schools were 90% or more one race
1970	69 of 282 schools were 90% or more white 133 of 282 schools were 90% or more black 71.6% of all schools were 90% or more one race
1960-61	65.8% of the total number of black students in regular schools were in 90% or more black schools

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1970-71 74.9% of the total number of black students in regular schools were in 90% or more black schools.

This record reflects a present and expanding pattern of all black schools in Detroit (resulting in part from State action) separated only by school district boundaries from nearby all white schools. We cannot see how such segregation can be any less harmful to the minority students than if the same result were accomplished within one school district.

The boundaries of the Detroit School district are identical to the geographical boundaries of the City of Detroit. This means that the Detroit school district, like the City, contains within its boundaries two entirely separate cities (and school districts), Hamtramck and Highland Park, and surrounds a third City (and school district), Dearborn, on three sides. Immediately adjacent to the boundaries of the Detroit school district are seventeen school districts. An overwhelming majority of these districts, other than Detroit, Highland Park, River Rouge and Hamtramck, are entirely white or contain only a token number of black students.

Like the District Judge, we see no validity to an argument which asserts that the constitutional right to equality before the law is hemmed in by the boundaries of a school district.

A. Status of School Districts under Michigan Law

This conclusion is supported by the status of school districts under Michigan law and by the historical control exercised over local school districts by the legislature of Michigan and by State agencies and officials, which we now discuss.

It is well established under the Constitution and laws of Michigan that the public school system is a State function and that local school districts are instrumentalities of the State created for administrative convenience.

The Northwest Ordinance of 1787 governing the Territory of Michigan provided:

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> "Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Art. III.

With this genesis, Michigan's four Constitutions have clearly established that the public school system in that State is solely a State function. The Constitution of 1835 in Article X, Section 3, provided, in part: "The legislature shall provide for a system of common schools . . ." The Constitution of 1850, Article XIII, Section 4, provided, in part: "The legislature shall . . . provide for and establish a system of primary schools . . ." Section 1 of the same Article provided, ". . . the Superintendent of Public Instruction shall have general supervision of public instruction . . ."

The Constitution of 1908 in Article XI, Section 2, provided that the Superintendent of Public Instruction "shall have general supervision of public instruction in the State." Article XI, Section 9, provided, in part as follows:

> "The legislature shall continue a system of primary schools, whereby every school district in the State shall provide for the education of pupils without charge for tuition . . ."

The Constitution of 1963, the present Constitution of the State of Michigan, in Article VIII, Section 2, provides, in part, as follows:

> "The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law."

In interpereting the above educational provisions of the Constitution of 1850, the Michigan Supreme Court stated, "The school district is a State agency. Moreover, it is of legislative creation . . ." *Attorney General* v. *Lowrey*, 131 Mich. 639, 644, 92 N.W. 289, 290 (1902). Again, interpreting

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the Constitution of 1850, the Supreme Court of Michigan in *Attorney General* v. *Detroit Board of Education*, 154 Mich. 584, 590, 118 N.W. 606, 609 (1908), adopted lower court language which read:

> "Education in Michigan belongs to the State. It is no part of the local self-government inherent in the township or municipality, except so far as the legislature may chose to make it such. The Constitution has turned the whole subject over to the legislature . . ."

The Supreme Court of Michigan interpreted Article XI, Section 9, of the Constitution of 1908 to mean:

> "The legislature has entire control over the schools of the State subject only to the provisions above referred to. The division of the territory of the State into districts, the conduct of the school, the qualifications of teachers, the subjects to be taught therein are all within its control." *Child Welfare* v. *Kennedy School Dist.*, 220 Mich. 290, 296, 189 N.W. 1002, 1004 (1922).

In the leading case concerning construction of this section of the Michigan Constitution of 1963, the Michigan Supreme Court said:

> "It is the responsibility of the State board of education to supervise the system of free public schools set up by the legislature and, as a part of that responsibility, to promulgate regulations specifying the number of hours necessary to constitute a school day for elementary school students as well as for other classifications or groupings of students, to determine the curricula and, in general, to exercise leadership and supervision over the public school system." *Welling* v. *Livonia Board of Education*, 382 Mich. 620, 624, 171 N.W.2d 545, 546 (1969).

Michigan has not treated its school districts as sacrosanct. To the contrary, Michigan always has regarded education as the fundamental business of the State as a whole. Local

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school districts are creatures of the State and act as instrumentalities of the State under State control. *Cf. Senghas* v. *L'Anse Creuse Public Schools*, 368 Mich. 557, 118 N.W.2d 975 (1962); *McLaughlin* v. *Board of Education*, 255 Mich. 667, 239 N.W. 374, (1931).

The record discloses a number of examples of State control over local public education in Michigan.

1. Following the holding of *Welling* v. *Livonia Board of Education*, *supra*, that there was no minimum length of day required under the 180-day school attendance rule absent a State Board of Education regulation, the Michigan State Board of Education, acting under its Constitutional mandate without legislative authority, established an administrative rule requiring local school boards to provide a minimum number of hours per school year. See, *School Districts Child Account for Distribution of State Aid*, Bulletin No. 1005, Michigan State Department of Education (1970).

2. Public Act 289 of 1964 (MSA § 15.2299 (1) *et seq.*, MCLA § 388.681 *et seq.*) required Michigan school districts to operate K-12 systems. When Public Act 289 became effective, 1,438 public school districts existed in Michigan. By the beginning of 1968, this figure had been reduced to 738, meaning that 700 school districts in Michigan have disappeared since 1964 through reorganization. Annual Report, Committee on School District Reorganization, 1968 Journal of the Senate 422-423 (March 1, 1968).

3. Pursuant to Act 289 of 1964, *supra*, the State Board of Education ordered the merger of the Brownstown No. 10, Hand, Maple Grove and Carson school districts, all in Wayne County. The action is best explained by the fact that Brownstown was, at that time, the wealthiest school district in the State, indeed, with a property valuation of $340,000 backing each child, perhaps the wealthiest district in the nation, while the other three districts were extremely poor.

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4. When the Sumpter School District was on the verge of bankruptcy in 1968, the State Board of Education, acting under Public Act 239 of 1967 (MSA § 15.2299(31) *et seq.*, MCLA § 388.691 *et seq.*), merged the district with four adjoining districts, including the Airport School District. Significantly, though Sumpter was in Wayne County, Airport was in Monroe County, showing that county lines are not inviolate in Michigan.

5. The Nankin Mills School District in Wayne County was beset with financial problems and had no high school. Again, pursuant to Act 239, the State Board of Education in 1969 ordered this school district to merge with the Livonia, Garden City and Wayne Community schools.

6. When the Inkster School District in Wayne County was on the verge of financial bankruptcy, the Michigan legislature passed Public Act 32 of 1968 (MSA § 15.1916 *et seq.*, *MCLA* § 388.201 *et seq.*) enabling the district to borrow $705,000 but on the condition that if the district could not balance its budget, the State Board of Education could reorganize, merge or annex the district. The legislative history of Act 32 indicates at least two legislators voted against the bill in the House of Representatives because of the excessive control given to the State Board of Education:

> "I voted No on House Bill No. 3332 because in setting up the machinery to bail out distressed districts, it takes from the local communities the control over their own educational system by providing for excessive arbitrary reorganization powers in the hands of the Board of Education. . ."
>
> "This bill certainly sets up the State Board of Education to be a dictator of all school districts that run into financial problems." 1968 Journal of the House of Representatives 1965.

7. Too small and too poor to operate a high school, the all-black Carver School District in suburban Oakland County

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reached a crisis in 1960 when surrounding white districts refused to accept Carver pupils on a tuition basis. The Governor and Superintendent of Public Instruction helped to merge the Carver district with Oak Park.

8. The State Board of Education and Superintendent of Public Instruction may withhold State aid for failure to operate the minimum school year. MSA § 15.3375, MCLA § 340.575. In 1970, funds were withheld from the City of Grand Rapids School District. 17 Michigan School Board Journal 3 (March, 1970). For Attorney General Opinions holding that State aid may be withheld by the State Board of Education from school districts for hiring uncertified teachers, defaulting on State loans and for other reasons, see Op. Atty. Gen. No. 880, 1949-1950 Report of the Attorney General 104 (January 24, 1949, Roth); No. 2333, 1955 Report of the Attorney General 561 (October 20, 1955, Kavanaugh); No. 4097, 1961-1962 Report of the Attorney General 553 (October 8, 1962, Kelley).

9. The State of Michigan contributes, on the average, 34% of the operating budgets of the 54 school districts included in the Metropolitan Plan of Integration. In eleven of the 54 districts, the State's contribution exceeds 50% and in eight more, it exceeds 40%. State aid is appropriated from the General Fund, revenue raised through state-wide taxation, and is distributed annually to the local school districts under a formula devised by the legislature. See, *e. g.*, Public Act 134 (1971), MSA § 15.1919(51), MCLA § 388.611.

Though the local school districts obtain funds from the assessment of local property, the ultimate authority in insuring equalized property valuations throughout the State is the State Tax Commission. MSA § 7.631, *et seq.*, MCLA § 209.101, *et seq.*; MSA § 7.206, MCLA § 211.148; MSA § 7.52, MCLA § 211.34. The State's duty to equalize is required by the Michigan Constitution, Article IX, Section 3. This "State equalized valuation" serves as the basis for calculating local

revenue yields. See, *Ranking of Michigan Public High School – School Districts by Selected Financial Data, 1970,* Bulletin 1012, Michigan State Department of Education (1971).

10. The Michigan School Code reaffirms the ultimate control of the State over public education. Local school districts must observe all State laws relating to schools,[1] hold school a minimum number of days per year,[2] employ only certified teachers,[3] teach civics, health and physical education and drivers' education,[4] excuse students to attend religious instruction classes,[5] observe State requirements when teaching sex education,[6] make annual financial and other reports to the Superintendent of Public Instruction,[7] adopt only textbooks which are listed with the Superintendent of Public Instruction[8] and must follow all rules and regulations of the State Department of Education.

Local school districts, unless they have the approval of the State Board of Education or the Superintendent of Public Instruction, cannot consolidate with another school district,[9] annex territory,[10] divide or attach parts of other districts,[11] borrow monies in anticipation of State aid,[12] construct, re-

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[1] MSA § 15.3252(c), MCLA § 340.252(c).

[2] MSA § 15.3575, MCLA § 340.575.

[3] MSA §§ 15.1023(10)(a), 15.3570, MCLA §§ 388.1010(a), 340.570.

[4] MSA §§ 15.1951,15.3361, MCLA §§ 388.371, 340.361; MSA §§ 15.3781-15.3782, MCLA §§ 340.781-340.782; MSA § 9.2511(c), MCLA § 257.811(c).

[5] MSA § 15.3732(g), MCLA § 340.732(g).

[6] MSA § 15.3789, MCLA § 340.789.

[7] MSA § 15.3612, MCLA § 340.612; MSA §§ 15.3616, 15.3688, MCLA §§ 340.616, 340.638.

[8] MSA § 15.3887(1), MCLA § 340.887(1).

[9] MSA § 15.3402, MCLA § 340.402.

[10] MSA § 15.3431, MCLA § 340.431.

[11] MSA § 15.3447, MCLA § 340.447.

[12] MSA § 15.3567(1), MCLA § 340.567(a).

construct or remodel school buildings or additions to them,[13] establish a program for the prevention and treatment of behavior problems of children,[14] employ a superintendent without a bachelor's degree from a college acceptable to the State Board of Education,[15] establish facilities and programs for the day care of the physically handicapped or initiate programs for the mentally handicapped.[15]

The power to withhold State aid, of course, effects enormous leverage upon any local school district, since on the average 34 per cent of the operation budget of the 34 school districts included in the Metropolitan Plan is paid for by the State.

In the instance of the City of Detroit, the State exhibited its understanding of its power over the local school district by the adoption of Act 48 of the Public Acts of 1970 which repealed a high school desegregation plan previously adopted by the Detroit Board of Education.

B. De Jure Acts of Desegregation

Thus, the record establishes that the State has committed de jure acts of segregation and that the State controls the instrumentalities whose action is necessary to remedy the harmful effects of the State acts. There can be little doubt that a federal court has both the power and the duty to effect a feasible desegregation plan. Indeed, such is the essence of *Brown II*. *Brown* v. *Board of Education*, 349 U.S. 294, 300-01 (1955). In the instant case the only feasible desegregation plan involves the crossing of the boundary lines between the Detroit School District and adjacent or nearby school districts for the limited purpose of providing an effective

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13 MSA § 15.1961, MCLA § 388.851, Op. Atty. Gen. No. 1837, 1952-1954 Report of the Attorney General 440 (Nov. 8 1954).

14 MSA § 15.3618, MCLA § 340.616.

15 MSA § 15.3573, MCLA § 340.573.

16 MSA § 15.3587(1), MCLA § 340.587(a); MSA § 15.3775, MCLA § 340.775.

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desegregation plan. The power to disregard such artificial barriers is all the more clear where, as here, the State has been guilty of discrimination which had the effect of creating and maintaining racial segregation along school district lines. See Section III B, pp. 41-49, *supra*. *United States* v. *Scotland Neck Board of Education*, 407 U.S. 484, 489 (1972); *Wright* v. *City of Emporia*, 407 U.S. 451, 463 (1972); *United States* v. *State of Texas*, 447 F.2d 441, 443-44 (5th Cir. 1971); *Haney* v. *County Board of Education of Sevier County*, 429 F.2d 364, 368 (8th Cir. 1970). *See also Davis* v. *Board of School Commissioners*, 402 U.S. 33, 36-38 (1971).

There exists, however, an even more compelling basis for the District Court's crossing artificial boundary lines to cure the State's constitutional violations. The instant case calls up haunting memories of the now long overruled and discredited "separate but equal doctrine" of *Plessy* v. *Ferguson*, 163 U.S. 537 (1896). If we hold that school district boundaries are absolute barriers to a Detroit school desegregation plan, we would be opening a way to nullify *Brown* v. *Board of Education* which overruled *Plessy*, *supra*.

This court in considering this record finds it impossible to declare "clearly erroneous" the District Judge's conclusion that any Detroit only desegregation plan will lead directly to a single segregated Detroit school district overwhelmingly black in all of its schools, surrounded by a ring of suburbs and suburban school districts overwhelmingly white in composition in a State in which the racial composition is 87 per cent white and 13 per cent black. Big city school systems for blacks surrounded by suburban school systems for whites cannot represent equal protection of the law.

VI. The District Judge's Order to Prepare A Metropolitan Area Desegregation Plan

The third major issue in this case pertains to the validity of the District Judge's ruling on desegregation area and order for development of a plan of desegregation dated June 14,

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1972, accompanied by a statement of findings of facts and conclusions of law in support thereof.

At the outset it is obvious from what we have said pertaining to the inadequacy of any Detroit only desegregation plan that this court feels that some plan for desegregation beyond the boundaries of the Detroit School District is both within the equity powers of the District Court and essential to a solution of this problem. We reiterate this, keeping in mind the admonition from Chief Justice Marshall:

> "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

We reject the contention that school district lines are sacrosanct and that the jurisdiction of the District Court to grant equitable relief in the present case is limited to the geographical boundaries of Detroit. We reiterate that school districts and school boards are instrumentalities of the State. *See Cooper* v. *Aaron*, 358 U.S. 1, 16 (1958). As early as *Brown II* the Supreme Court pointed out that:

> "[T]he courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, ..." 349 U.S. at 300-01.

The Supreme Court has held that school boundary lines cannot be changed or new school systems created where the result is a larger imbalance in racial ratios in school systems where all vestiges of enforced racial segregation have not been eliminated. *United States* v. *Scotland Neck Board of Edu-*

cation, 407 U.S. 484 (1972); *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972). This is true regardless of "dominant purpose." *Wright* v. *City of Emporia*, 407 U.S. at 462.

If school boundary lines cannot be changed for an unconstitutional purpose, it follows logically that existing boundary lines cannot be frozen for an unconstitutional purpose.

We therefore conclude that the District Court in the present case is not confined to the boundary lines of Detroit in fashioning equitable relief.

To the extent that this opinion is in conflict with *Bradley* v. *School Board of Richmond*, 462 F.2d 1058 (4th Cir. 1972), *petition for cert. filed*, 41 U.S.L.W. 3211 (U.S. Oct. 5, 1972), we respectfully decline to follow that decision.

VII. Rights of Other School Districts To Be Made Parties and To Be Heard

In his "Ruling on Propriety of Considering a Metropolitan Remedy" the District Court defined the metropolitan area "for the present purposes" to comprise the three counties of Wayne, Oakland and Macomb. In his "Findings of Fact and Conclusions of Law in Support of Ruling on Desegregation Area and Development Plans" the District Court noted that 'the court has taken no proofs with respect to the establishment of the boundaries in the counties of Wayne, Oakland and Macomb." In his "Ruling on Desegregation Area and Order for Development of Plan of Segregation" the District Court defined the desegregation area to include some 53 school districts. Certain of these school districts have intervened in this case, but have not yet been afforded an opportunity to offer proof. Some of the other school districts are not parties to the litigation.

Under the authorities heretofore discussed, these school districts are arms and instrumentalities of the State of Michigan. Nevertheless, under Michigan law, they may sue and be sued. *See* 11 M.S.A. §§ 15.3154, 15.3192.

Rule 19, Fed. R. Civ. P. provides that a person who is subject to service of process shall be joined as a party to the action if "in his absence complete relief cannot be accorded among those already parties." Under this rule joinder of necessary parties is required if jurisdiction over them can be obtained and if joinder will not defeat federal jurisdiction of the case. *See Bradley* v. *School Board of City of Richmond*, 51 F.R.D. 139 (E.D. Va. 1970).

We hold that school districts which are to be affected by the decree of the District Court are "necessary parties" under Rule 19. As a prerequisite to the implementation of a plan in this case affecting any school district, the affected district first must be made a party to this litigation and afforded an opportunity to be heard.

While agreeing with the District Court in its conclusion that it can consider a metropolitan remedy, we express no views as to the desegregation area set forth in the orders of the District Court.

We vacate the order of March 28, 1972, entitled "Ruling on Propriety of a Metropolitan Remedy to Accomplish Desegregation of the Public Schools of Detroit." For the guidance of the District Court on remand, however, we hold that, in fashioning an equitable remedy in this case, it will not be necessary for the District Court to find discriminatory conduct on the part of each school district, either de jure or de facto, as a prerequisite to including such district in a desegregation area to be defined by the court's decree.

As said in *United States* v. *Texas Education Agency*, ——— F.2d —— (5th Cir. 1972):

> "Some schools may be the 'result' of state-imposed segregation even though no specific discriminatory school board action may be shown as to those schools. Had the school authorities not specifically segregated the minority students in certain schools, other schools may have developed as desegregated facilities. Thus, though they may not be 'pockets of discrimination,' these schools are

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the 'results' of discrimination." *United States* v. *Texas Education Agency, supra,* ——— F.2d at ———.

We also vacate the District Court's Ruling on Desegregation Area and Development Plan, dated June 14, 1972, except those parts of the order appointing a panel charged with the duty of preparing interim and final plans of desegregation. The panel appointed by the District Court is authorized to proceed with its studies and planning under the direction of the District Court. Pending further orders of the District Court or this Court, the defendants and school districts involved will continue to supply administrative and staff assistance to the panel upon its request. Until further order of the court, the reasonable costs incurred by the panel will be paid as provided by the District Court's order of June 14, 1972.

The order of the District Court directing the purchase of school buses, dated July 11, 1972, also is vacated, subject to the right of the District Court, in its discretion, to consider the entry of another order requiring the purchase of school buses at the appropriate time.

VIII. Equitable Relief

In this opinion we have emphasized the broad powers of a District Court to fashion equitable relief in school desegregation cases. For the guidance of the District Court on remand, we now review the decisions on this subject in further depth.

1) The Fundamental Constitutional Holding:

> "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment." *Brown* v. *Board of Education,* 347 U.S. 483, 495 (1954).

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2) The Supreme Court's Initial Description of the Equitable Remedy:

> "In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies[4] and by a facility for adjusting and reconciling public and private needs.[5] These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.
>
> "While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regula-

[4] See *Alexander* v. *Hillman*, 296 U.S. 222, 239.

[5] See *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329-330.

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tions which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases." *Brown* v. *Board of Education of Topeka [II]*, 349 U.S. 294, 300-01 (1955)

3) Delay Is No Longer Tolerable:

"In determining whether respondent School Board met that command by adopting its 'freedom-of-choice' plan, it is relevant that this first step did not come until some 11 years after *Brown I* was decided and 10 years after *Brown II* directed the making of a 'prompt and reasonable start.' This deliberate perpetuation of the unconstitutional dual system can only have compounded the harm of such a system. Such delays are no longer tolerable, for 'the governing constitutional principles no longer bear the imprint of newly enunciated doctrine.' *Watson* v. *City of Memphis, supra,* at 529; see *Bradley* v. *School Board, supra; Rogers* v. *Paul,* 382 U.S. 198. Moreover, *a plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is also intolerable.* 'The time for mere 'deliberate speed' has run out,' *Griffin* v. *County School Board,* 377 U.S. 218, 234; 'the context in which we must interpret and apply this language [of *Brown II*] to plans for desegregation has been significantly altered.' *Goss* v. *Board of Education,* 373 U.S. 683, 689. See *Calhoun* v. *Latimer,* 377 U.S. 263. *The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now.*" *Green* v. *County School Board,* 391 U.S. 430, 438-39 (1968) (Emphasis added.)

4) State Imposed Segregation Must be Completely Removed at Earliest Practicable Date:

"The obligation of the district courts, as it always has

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been, is to assess the effectiveness of a proposed plan in achieving desegregation. *There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance.* It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. *Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system 'at the earliest practicable date,' then the plan may be said to provide effective relief.* Of course, the availability to the board of other more promising courses of action may indicate a lack of good faith; and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method. Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed. See No. 805, *Raney* v. *Board of Education, post,* at 449." *Green* v. *County School Board,* 391 U.S. 430, 439 (1968) (Emphasis added.)

5) The Court Has The Power and The Duty to Eliminate Effects of Past Discrimination:

"We bear in mind that the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." Louisiana v. *United States,* 380 U. S. 145, 154. Compare the remedies discussed in, *e. g., NLRB* v. *Newport News Shipbuilding & Dry Dock Co.,* 308 U. S. 241; *United States* v. *Crescent Amusement Co.,* 323 U. S. 173; *Stand-*

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ard Oil Co. v. *United States*, 221 U. S. 1. See also *Griffin* v. *County School Board*, 377 U. S. 218, 232-234. *Green* v. *County School Board*, 391 U.S. 430, n. 4 at 438 (relating to the remedial command of Brown II) (Emphasis added.)

6) Resegregation is Impermissible:

"Like the transfer provisions held invalid in *Goss* v. *Board of Education*, 373 U.S. 683, 686, '[i]t is readily apparent that the transfer [provision] lends itself to perpetuation of segregation.' While we there indicated that 'free-transfer' plans under some circumstances might be valid, we explicitly stated that '*no* official transfer plan or *provision of which racial segregation is the inevitable consequence may stand under the Fourteenth Amendment.*' *Id.*, at 689. So it is here; no attempt has been made to justify the transfer provision as a device designed to meet 'legitimate local problems,' *ibid.*; rather it patently operates as a device to allow *resegregation* of the races to the extent desegregation would be achieved by geographically drawn zones. Respondent's argument in this Court reveals its purpose. We are frankly told in the Brief that without the transfer option it is apprehended that white students will flee the school system altogether. 'But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.' *Brown II*, at 300.

"We do not hold that 'free transfer' can have no place in a desegregation plan. But like 'freedom of choice,' if it cannot be shown that such a plan will further rather than delay conversion to a unitary, nonracial, nondiscriminatory school system, it must be held unacceptable. See *Green* v. *County School Board*, *supra*, at 439-441.

"*We conclude, therefore, that the Board 'must be required to formulate a new plan and, in light of other courses which appear open to the Board. . . . fashion*

steps which promise realistically to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools." Id., at 442. *Monroe* v. *Board of Commissioners*, 391 U.S. 450, 459-60 (1968) (Emphasis added.)

7) The Remedial Tools:

In *Swann* v. *Board of Education*, 402 U.S. 1, 15, Chief Justice Burger, writing for a unanimous Court, said:

> "If school authorities fail in their affirmative obligations under these holdings, judicial authority may be invoked. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.
>
> > 'The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.' *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329-330 (1944), cited in *Brown II*, *supra*, at 300."

a) The Flexible Ratio:

"As the voluminous record in this case shows, the predicate for the District Court's use of the 71%-29% ratio was twofold: first, its express finding, approved by the Court of Appeals and not challenged here, that a dual school system had been maintained by the school authorities at least until 1969; second, its finding, also approved by the Court of Appeals, that the school board had totally defaulted in its acknowledged duty to come forward with an acceptable plan of its own, notwithstanding the patient efforts of the District Judge who, on

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at least three occasions, urged the board to submit plans. As the statement of facts shows, these findings are abundantly supported by the record. It was because of this total failure of the school board that the District Court was obliged to turn to other qualified sources, and Dr. Finger was designated to assist the District Court to do what the board should have done.

"We see therefore that the use made of mathematical ratios was no more than a starting point in the process of shaping a remedy, rather than an inflexible requirement. From that starting point the District Court proceeded to frame a decree that was within its discretionary powers, as an equitable remedy for the particular circumstances. As we said in *Green*, a school authority's remedial plan or a district court's remedial decree is to be judged by its effectiveness. Awareness of the racial composition of the whole school system is likely to be a useful starting point in shaping a remedy to correct past constitutional violations. In sum, the very limited use made of mathematical ratios was within the equitable remedial discretion of the District Court." *Swann* v. *Board of Education*, 402 U.S. 1, 24-25 (1970).

b) Noncontiguous School Zoning:

"The maps submitted in these cases graphically demonstrate that one of the principal tools employed by school planners and by courts to break up the dual school system has been a frank — and sometimes drastic — gerrymandering of school districts and attendance zones. An additional step was pairing, 'clustering,' or 'grouping' of schools with attendance assignments made deliberately to accomplish the transfer of Negro students out of formerly segregated Negro schools and transfer of white students to formerly all-Negro schools. More often than not, these zones are neither compact nor contiguous; indeed they may be on opposite ends of the city. As an interim corrective measure, this cannot be said to be beyond the broad remedial powers of a court.

"Absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.

"No fixed or even substantially fixed guidelines can be established as to how far a court can go, but it must be recognized that there are limits. The objective is to dismantle the dual school system. 'Racially neutral' assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. When school authorities present a district court with a 'loaded game board,' affirmative action in the form of remedial altering of attendance zones is proper to achieve truly non-discriminatory assignments. In short, an assignment plan is not acceptable simply because it appears to be neutral.

"In this area, we must of necessity rely to a large extent, as this Court has for more than 16 years, on the informed judgment of the district courts in the first instance and on courts of appeals.

"*We hold that the pairing and grouping of noncontiguous school zones is a permissible tool and such action is to be considered in light of the objectives sought.* Judicial steps in shaping such zones going beyond combinations of contiguous areas should be examined in light of what is said in subdivisions (1), (2), and (3) of this opinion

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concerning the objectives to be sought. Maps do not tell the whole story since noncontiguous school zones may be more accessible to each other in terms of the critical travel time, because of traffic patterns and good highways, than schools geographically closer together. Conditions in different localities will vary so widely that no rigid rules can be laid down to govern all situations." *Swann* v. *Board of Education*, *supra*, at 27-29. (Emphasis added.)

c) Transportation of Students:

"The scope of permissible transportation of students as an implement of a remedial decree has never been defined by this Court and by the very nature of the problem it cannot be defined with precision. No rigid guidelines as to student transportation can be given for application to the infinite variety of problems presented in thousands of situations. *Bus transportation has been an integral part of the public education system for years, and was perhaps the single most important factor in the transition from the one-room schoolhouse to the consolidated school. Eighteen million of the Nation's public school children, approximately 39%, were transported to their schools by bus in 1969-1970 in all parts of the country.*

"The importance of bus transportation as a normal and accepted tool of educational policy is readily discernible in this and the companion case, *Davis*, *supra*. The Charlotte school authorities did not purport to assign students on the basis of geographically drawn zones until 1965 and then they allowed almost unlimited transfer privileges. *The District Court's conclusion that assignment of children to the school nearest their home serving their grade would not produce an effective dismantling of the dual system is supported by the record.*

"*Thus the remedial techniques used in the District Court's order were within that court's power to pro-*

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vide equitable relief; implementation of the decree is well within the capacity of the school authority.

"The decree provided that the buses used to implement the plan would operate on direct routes. Students would be picked up at schools near their homes and transported to the schools they were to attend. The trips for elementary school pupils average about seven miles and the District Court found that they would take "not over 35 minutes at the most." This system compares favorably with the transportation plan previously operated in Charlotte under which each day 23,600 students on all grade levels were transported an average of 15 miles one way for an average trip requiring over an hour. In these circumstances, we find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans cannot be limited to the walk-in school.

"*An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process.* District courts must weigh the soundness of any transportation plan in light of what is said in subdivisions (1), (2), and (3) above. It hardly needs stating that the limits on time of travel will vary with many factors, but probably with none more than the age of the students. The reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets but fundamentally no more so than remedial measures courts of equity have traditionally employed." *Swann* v. *Board of Education, supra*, at 29-31. (Emphasis added.)

In *North Carolina* v. *Swann*, 402 U.S. 43, 46, the Chief Justice said: "As noted in *Swann, supra*, at 29, bus transportation has long been an integral part of all educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance on it."

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d) Equity Power to Require Payment of Tax Funds for Integrated Schools:

In the exercise of its equity powers, a District Court may order that public funds be expended, particularly when such an expenditure is necessary to meet the minimum requirements mandated by the Constitution. *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218, 233 (1964); *Eaton* v. *New Hanover County Board of Education*, 459 F.2d 684 (4th Cir. 1972); *Brewer* v. *School Board of City of Norfolk*, 456 F.2d 943, 947, 948 (4th Cir.), *cert. denied*, 406 U.S. 933 (1972); *Plaquemines Parish School Board* v. *United States*, 415 F.2d 817 (5th Cir. 1969).

These and other cases cited in this opinion outline the broad scope of equitable relief that may be fashioned by the District Court in this case on remand after all school districts to be affected are afforded an opportunity to be heard as hereinabove provided.

IX. Other Issues

Numerous other issues are presented which do not require discussion.

We do not consider it necessary to construe the "Broomfield Amendment," Pub. L. No. 92-318, 86 Stat. 235, § 803, known as the Education Amendments of 1972, since no final desegregation order has been entered.

Deal v. *Cincinnati Board of Education*, 419 F.2d 1387, 1392 (6th Cir. 1969), *cert. denied*, 402 U.S. 962 (1971) is not controlling. There the District Court made findings of fact that there had been no unconstitutional conduct on the part of the Cincinnati Board of Education. This court held that these findings of fact were not clearly erroneous. Rule 52(a), Fed. R. Civ. P.

All other contentions presented by the appellants have been considered and are found to be without merit.

X. Conclusion

1. The Ruling of the District Court on the Issue of Segregation, dated September 27, 1971, and reported at 338 F.Supp. 582, is affirmed.

2. The findings of fact and conclusions of law on "Detroit-only" plans of desegregation, dated March 28, 1972, are affirmed.

3. The Ruling on Propriety of a Metropolitan Remedy to Accomplish Desegregation of the Public Schools of the City of Detroit, dated March 24, 1972, is affirmed in part, but vacated for the reasons set forth above.

4. The Ruling on Desegregation Area and Development of Plan, dated June 14, 1972, is vacated except as hereinabove prescribed.

5. The order dated July 11, 1972, directing the purchase of school buses is vacated.

The case is remanded to the District Court for further proceedings not inconsistent with this opinion.

No costs are taxed. Each party will bear his own costs.

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MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1972

Nos. 72-549 and 72-550

SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

CAROLYN BRADLEY, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

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In The

Supreme Court of the United States

October Term, 1972

Nos. 72-549 and 72-550

SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

CAROLYN BRADLEY, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

For the reasons hereafter stated, the respondents respectfully submit that this Court should deny the petitions for writs of certiorari in this case.

OPINIONS BELOW

The opinions in the Court of Appeals for the Fourth Circuit are reported at 462 F.2d 1058 and are printed in the Petitioners' Appendix at pp. 557a-602a. The opinion of the District Court for the Eastern District of Virginia is reported at 338 F.Supp. 67 and is printed in the Petitioner's Appendix at pp. 164a-545a.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The petitions were timely filed pursuant to ex parte orders extending the time for filing entered by Mr. Justice Douglas and Mr. Justice Marshall.

QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Fourth Circuit erred in holding that the District Court could not compel the joinder of three separate school systems—each already operating a unitary school system, the boundaries of which, under state law, are co-terminous with long-standing city and county lines—where the sole purpose and effect of the proposed joinder was to assure a white majority in each city school of not less than 60% and not more than 80%?

2. Whether the Constitution or any decisions of this Court require that a unitary city-wide school system be reconstructed by adding to it two unitary county-wide school systems in order to assure a white majority in each city school?

3. Whether the Constitution or any decisions of this Court require the obliteration of centuries-old boundary lines between the Counties of Henrico and Chesterfield and the

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ity of Richmond solely to assure white-majority schools in
ıe City of Richmond, when these lines are not, were not,
ıd never have been manipulated to inhibit desegregation
r to promote segregation?

CONSTITUTIONAL AND STATUTORY PROVISIONS

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *U.S. Const. amend. XIV, § 1.*

* * *

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. *U.S. Const., amend. X.*

STATEMENT

The City of Richmond, the County of Henrico, and the ounty of Chesterfield are local government units within the ommonwealth of Virginia.[1] They have a history dating ack two and one quarter centuries. Henrico County was eated in 1634; the City of Richmond in 1742; Chesterfield ounty in 1749. In the interim, the City of Richmond has

[1] "In Virginia, cities and counties are mutually exclusive. The area ıbraced within a city's limits is not a part of a county. Cities expand the expense of the territory of an adjacent county, and Virginia has ovided a judicial procedure as the means for extending the limits of ies." *Holt* v. *City of Richmond*, 459 F.2d 1093 (4th Cir. 1972).

enlarged its territory by annexation on eleven different occasions, most recently in 1970. These annexations were the only governmental actions affecting the racial composition of the school systems. Their effect has been to increase the percentage of the white population within the City of Richmond.

These three political subdivisions are charged with the general functions of local government within their geographic boundaries. Each governing body is elected by popular vote and exercises the power to tax to provide revenues for all governmental functions, including the function of public education which has been a local charge since 1871. The school systems that are the concern of this case are administered by appointed school boards and are not fiscally independent school districts. Each school system is part and parcel of the respective county or city with which its boundaries are co-terminous.[2]

This case derives from an attempt to dismantle these three unitary school systems, to separate each from its local government, and to create a new and distinct school system which would be financially dependent upon three (3) separate local governments and would be so large as to be in the top 0.2% of all school systems in the United States. The ostensible excuse for this requirement that the state restructure its internal government was to "desegregate" the schools of Richmond, for that was the extent of the charge to the federal courts by this Court in the series of cases beginning with *Brown* v. *Board of Education*, 347 U.S.

[2] *"Virginia's school divisions differ from those of most other states in their fiscal dependence; that is, the lack of independent authority to tap local sources of revenue for school purposes.* Their annual budgets and authorizations for issuance of bonds for capital outlay must receive the approval of local boards of supervisors." *1 Virginia Educational Needs Assessment Study 336 (1970).* (Richmond Ex. 69)

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483 (1954), and culminating in *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971), *reh. denied,* 403 U.S. 912 (1971).

The fact is, however, that Richmond schools and the Chesterfield and Henrico schools had already been desegregated—they were and are operating as unitary systems—unless by "desegregation" is meant a school system in which there must be a white majority, both in the system and in each school within the system. Indeed, the announced objective of the district court was to do more than require a simple white majority. To satisfy its notions of "desegregation"—usually transmogrified into "a viable racial mix"—it would require a white majority of no less than 60% and no more than 80% in each school within the system.

It was this Court ordered plan for "a viable racial mix"—for large white majorities in each school—that the Fourth Circuit rejected and that this Court is asked to restore. We submit that an order for white majorities in all schools is not only not mandated by the Constitution or by this Court but would in fact violate the Constitution and the judgments of this tribunal.

This litigation originated in 1961 to desegregate the public schools of the City of Richmond, at a time when those schools were operated as a dual system. It was not until the City of Richmond was faced with an order to effect a unitary system, which would result in predominantly black student bodies in virtually every school in Richmond, that the City sought to secure an amalgamation of its school system with the unitary school systems of the adjoining counties. It is not insignificant that the plan which the Fourth Circuit struck down as unwarranted was originally proposed by Richmond, with its majority white voting population and predominately white government, and not by the plaintiffs who, over a decade of bitter opposition by the

City, had sought the desegregation of the Richmond schools.

The background of the case with which we are concerned here starts in 1970, with the request for further relief by black plaintiffs against the City of Richmond, in a case to which these respondents were not even parties. The district court found that Richmond was not operating a unitary system but concluded that a plan proposed by the plaintiffs and limited to the City would remedy that defect. That plan, known as the Foster Plan, was not effected in 1970-71 because the trial court found that adequate transportation would not be available in time for the 1970-71 school year.

Concerning the Foster Plan, the trial court then said:

> Through Dr. Foster the plaintiffs proposed a plan described below, which the Court finds would result in a unitary system. *Bradley* v. *School Board of Richmond*, 317 F.Supp. 555, 568 (E.D. Va. 1970).
>
> The Court therefore concludes:
>
> * * *
>
> 2. That the plaintiffs' plan would, if adopted, create a unitary system.
>
> * * *
>
> 4. That while racial balance is not required in each and every school in the system, there is no intractible remnant of segregation in the City of Richmond school system since all parts of the city can be reached by virtue of reasonable amounts of transportation, both as to distances, times and sums involved.
>
> The Court further finds that the adoption of a plan such as suggested by Dr. Foster may well not only create a unitary system, but do much toward the thwarting of resegregation of schools once the unitary system has been put into effect. (317 F.Supp. at 576)

The City of Richmond subsequently proposed a unitary plan of its own, also limited to the City's geographical

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boundaries, known as plan 3,[3] which modified the Foster Plan and was chosen by the district court as the more appropriate program because, while it too would effectuate a unitary system, there were other advantages that it would also secure. As the trial court said: "Although operation under either plan would fulfill the School Board's legal duty, it would be fully justified in preferring plan 3 on the basis of whatever administrative or educational reasons it finds persuasive." *Bradley* v. *School Board of Richmond*, 325 F.Supp. 828, 846 (E.D. Va. 1971). This unitary system was ordered to begin with the 1971-72 school year and, indeed, went into effect.

It was only after approval of the Foster Plan that the City of Richmond came forward with its gerrymandering proposal to bring Henrico and Chesterfield Counties into a single school system. What its motives were can only be surmised. Nevertheless, it was at the same time that, in a class action suit brought by and on behalf of blacks, the trial judge in this case said of the most recent annexation of territory by the City of Richmond: "The Court finds that the primary reason [for the annexation agreement] was in order to assure an unquestioned White majority for the upcoming Councilmanic Elections." *Holt* v. *City of Richmond*, 334 F.Supp. 228, 236 (E.D. Va. 1971). Whatever its motives, the effect of the plan would have been to borrow white children from Chesterfield and Henrico so that the white school children of the City of Richmond would be assured of attending schools in each of which there would be a substantial white majority.

At the trial, the district court heard evidence in support of the City's plan for the gerrymander of the three school systems in order to assure a white majority, a plan in

[3] Plans 1, 2 and 3, numbered in order of Richmond's preference for each, were offered simultaneously. The district court found that Plans 1 and 2 failed to establish a unitary system. (App. 116a-117a)

which the district court had earlier indicated its interest. The testimony in support of the plan came primarily from Dr. Little, Richmond's associate superintendent of schools, who wrote it and from Dr. Pettigrew and others who had persistently offered the view that a "viable racial mix" required a white majority of from 60 to 80 percent in every school. Pettigrew's position, which was adopted by the district court, had been roundly denounced by Judge Sobeloff in one of the earlier cases in which the Pettigrew thesis had been put forward:

> The linch-pin of the dissent is the notion that, ideally, the goal of desegregation should be to achieve an "optimal mix," consisting of a white majority. It suggests, as did Dr. Pettigrew in his testimony in *Brewer v. School Board of City of Norfolk* (434 F.2d 408) (4th Cir. 1970), that desegregation should not go so far as to put whites in minority situations. In *Brewer* we gave short shrift to the Board "principles" fashioned largely from Dr. Pettigrew's testimony. Summary treatment is all it deserved.
>
> * * *
>
> Since the dissent has seen fit in this case to revive the spectre of the Pettigrew thesis, previously cast aside, I cannot let the matter pass without comment. This is no mere issue of expert testimony. It is no mere question of "sociology and educational theory." There have always been those who believed that segregation of the races in the schools was sound educational policy, but since *Brown* their reasoning has not been permitted to withstand the constitutional command. When the underpinnings of the white majority proposal are exposed, they seem to constitute a direct attack on the roots of the *Brown* decision. The minority's readiness even to entertain the idea reflects, I respectfully submit, a profound misunderstanding of the social and constitutional history of this nation and the Negro people.
>
> * * *

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The invidious nature of the Pettigrew thesis, advanced by the dissent in the present case, thus emerges. Its central proposition is that the value of a school depends on the characteristics of a majority of its students and superiority is related to whiteness, inferiority to blackness. Although the theory is couched in terms of "socio-economic class" and the necessity for the creation of a "middle-class milieu," nevertheless, at bottom, it rests on the generalization that, educationally speaking, white pupils are somehow better or more desirable than black pupils.

* * *

But school segregation is forbidden simply because its perpetuation is a living insult to the black children and immeasurably taints the education they receive. This is the precise lesson of *Brown*. Were a court to adopt the Pettigrew rationale it would do explicitly what compulsory segregation laws did implicitly. *Brunson* v. *Board of Trustees of School District No. 1 of Clarendon County, South Carolina*, 429 F.2d 820, 824, 826 (4th Cir. 1970) (Sobeloff, J., concurring, joined by Winter, J.).

There can be little doubt that the trial court did in fact apply the Pettigrew thesis in the formulation of the white-majority plan struck down by the Fourth Circuit. In his opinion, the trial judge stated:

> It should be pointed out that the Court in considering the testimony of the experts gives greater weight to those experts whose opinions were to the effect that equality of educational opportunity would flow from the consolidation of schools in the metropolitan area, and that the proposed plan is both reasonable and feasible, than to the testimony of those whose opinions differ. (338 F. Supp. at 115; App. 263a.)

That the judgment of the trial court rested on this "expertise" about the necessity for a "viable racial mix" is

attested by the language of the trial court throughout its opinion. It is perhaps best epitomized by the following quotations from that opinion:

> To achieve "integration," in Dr. Pettigrew's terms, one must have the "mix plus positive interaction, as we would want to say, between whites and blacks." Current research indicates that in order to achieve these benefits there is an optimum racial composition which should be sought in each school. Dr. Pettigrew placed this at from 20 to 40% black occupancy. These figures are not at all hard and fast barriers, but merely indicate to the racial composition range in which interaction of a positive sort is more likely to occur.
>
> * * *
>
> Based upon projected enrollments under the current assignment plan for Richmond city schools, very few students will be in schools with a black population of 20 to 40%. At the elementary level, 3.04% of the black students and 9.43% of the white students will be in such schools. In middle schools, 9.2% of blacks and 26.7% of whites will be in schools in that range. There will be no high school students in such schools.
>
> * * *
>
> If the Richmond metropolitan consolidation plan were implemented, 97% of black students in the area would attend schools in the range of 20-40% black; the remainder would be in 15-20% black schools. Under that plan 92.5% of the white students in the area would be in schools of the optimum mix determined by Dr. Pettigrew, and 7.5% would be in schools with a 15-20% black enrollment. (338 F. Supp. at 194-95; App. 437a-439a.)

Thus was the goal established—Dr. Pettigrew's formula; the deficiency in the existing systems was established—the failure to accommodate to Dr. Pettigrew's formula; and the means of accomplishing the goal was established—a mandate to conform to Dr. Pettigrew's formula.

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It is not surprising that the petitioners in this case have chosen to run away from the very bases on which the trial court judgment rested rather than rely on the thoroughly discredited theory of the "experts" who provided the rationale for the trial court's action.

In sum, the essential facts that should engage this Court's attention are these:

1. The school systems in the City of Richmond, and the Counties of Henrico and Chesterfield are unitary systems.

2. The three school systems are integral parts of the city and county governments upon which they are dependent for financing and are not separate, fiscally independent school districts.

3. The boundaries of the city and counties were not created nor have they been manipulated to further segregation or to prevent desegregation of any of the school systems.

4. The sole purpose and effect of the plan struck down by the Fourth Circuit was to assure substantial white majorities for children attending the Richmond schools.

ARGUMENT

The respondents respectfully submit that certiorari should be denied here because: (1) This case is *sui generis*. (2) The decision of the Fourth Circuit is in accord with and follows from all prior judgments of this Court. It is not in conflict with that of any other court of appeals.

I.

The Unique Nature Of The Case

The four decisive elements set out at the end of our Statement are those that distinguish this case from all others, decided and pending. The many decisions to which petitioners have made reference involve issues that are not and cannot be present in this case. It must be conceded, however, that if the remedy created by the district court were appropriate here, it would be appropriate anywhere.

1. *Busing.* Although massive busing is required in order to effectuate the district court's plan—and that busing would be totally segregated busing, with all black busloads moving out of the City of Richmond and all white busloads coming in—there is no challenge here to the propriety of busing within a school system in order to effect desegregation. See *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). The busing ordered by the district court here, however, was not to effect a unitary system but only for the purpose of securing a "viable racial mix": one that would assure white majorities in all schools. The distinction between busing for desegregation and busing for "racial balance" is one of which Justices of this Court have taken cognizance. See *Drummond* v. *Acree*, ... U.S. ..... (1972) (Powell, J.); *Board of Education of Oklahoma City* v. *Dowell*, ... U.S. ..... (1972) (Rehnquist, J.); *Kelley* v. *Metropolitan County Board of Education of Nashville, Tenn.*, ... U.S. ..... (1972) (Rehnquist, J.); *Guinn* v. *Kelley*, ... U.S. ..... (1972) (Douglas, J.); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Salem Forsyth County Board of Education* v. *Scott*, 404 U.S. 1221 (1971) (Burger, C.J.).

2. *Unitary Systems.* In no other case has a school system or several school systems, each of which has dismantled

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a dual system and replaced it with a unitary system, been subjected to further mandate to effect a new plan with a "better racial balance." See *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

3. *Gerrymander.* This is not a case in which boundary lines between school systems have been drawn or revised with either the intent or effect of inhibiting desegregation of schools within the systems. See *United States* v. *Scotland Neck City Board of Education*, 407 U.S. 484 (1972); *Wright* v. *Council of City of Emporia*, 407 U.S. 451 (1972). The boundary lines here sought to be destroyed by the trial court have been essentially unchanged for two centuries and more. The school systems have each been an integral part of the local governments of the individual city and counties.

4. *Economic equality and administrative feasibility.* This is not a case in which there is a disparity between or among school systems so that one has a viable economic base and another does not, or where one is too small to operate efficiently if at all. *See Rodriguez* v. *San Antonio Independent School District*, 337 F. Supp. 280 (W.D. Tex. 1971), probable jurisdiction noted, 406 U.S. 966 (1972), argued 12 Oct. 1972, No. 71-1332; *United States* v. *Texas*, 321 F. Supp. 1043 (E.D. Tex. 1970), *aff'd in part*, 447 F.2d 441 (5th Cir. 1971). On the contrary, the tax base and expenditure per pupil in Richmond is slightly higher than that in either of the two counties and no question of their adequacy has been raised. Each of the three school systems is now, by reason of its size, among the largest in the country. Richmond and Henrico are in the upper 1.1% and Chesterfield in the upper 4.3% of all school systems in the country. The combined system would be in the top 0.2%.

5. *Attendance zones.* This is not a case of drawing lines for attendance districts within a school system, which has been the problem in most of the cases that have heretofore arisen. See *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Cisneros* v. *Corpus Christi Independent School Dist.*, 459 F.2d 13 (5th Cir. 1972) (No. 71-2397); *Keyes* v. *School District No. 1, Denver, Colorado*, 445 F.2d 990 (10th Cir. 1971), *cert. granted*, 404 U.S. 1036 (1972), argued 12 Oct. 1972. No. 71-507. Here there are three separate school systems, each of which has had its attendance zones demarked in a way that assures their operation as unitary systems.

6. *Local government units.* The school systems here are not separate entities with their own taxing power. They are instead integral parts of local governments, with local constituencies—each local government being concerned not only for the education of its citizens, but for their health, welfare and safety. The case involves not just a redrawing of school system lines but the extraction of the school systems from their local governmental structures and the separation of the school systems from their revenue bases.

II.

Controlling Precedents

1. *The merits.* The obligation to desegregate the public schools in areas that had been subject to de jure segregation was set out precisely and concisely in this Court's opinion in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). That obligation is to dismantle dual school systems and replace them with unitary systems. There the Court said:

> The constant theme and thrust of every holding from *Brown I* to date is that state-enforced separation of

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races in public schools is discrimination that violates the Equal Protection Clause. The remedy commanded was to dismantle dual school systems.

We are concerned in these cases with the elimination of the discrimination inherent in the dual school systems, not with myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious, or ethnic grounds. The target of the cases from *Brown I* to the present was the dual school system. (402 U.S. at 22).

The dual school systems in the City of Richmond, the County of Chesterfield, and the County of Henrico have been eliminated—the mandate of *Brown I* has been satisfied. The trial court, however, would insist that something more be accomplished by way of assuring white majorities in the schools of Richmond. This the Court, in *Swann*, stated was beyond the command of the Constitution.

If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole. (402 U.S. at 24).

* * *

At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in *Brown I*. The systems will then be "unitary" in the sense required by our decisions in *Green* and *Alexander*.

It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither

> school authorities not district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary. (402 U.S. at 31-32).

There are no cases, as this Court well knows, that suggest that after the dual system has been replaced by a unitary system further steps must be taken to secure a "viable racial mix" by way of a white majority.[4] That a white majority is not a requisite to the elimination of desegregation is also clear from this Court's opinion in the recent *Emporia* case, where the Court mandated a school system with a majority of blacks in approximately the same ratio as now obtains in the schools of the City of Richmond. *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972).

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[4] If that were a valid objective, then quite clearly the counties surrounding Henrico and Chesterfield would have as much right—and the District Court would have the duty—to secure by importation or merger the white students necessary to attain a "viable racial mix." The City of Richmond's Exhibits Nos. 52 and 52A, reproduced here as Addendum A, *post*, graphically demonstrate the unworkability of the trial court's proposal.

Ironically, New Kent County, under consideration by this Court in *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), the case which gave rise to the 1970 request for further relief in the instant case, would be left with all majority black schools while Richmond used Henrico's white students to achieve its "viable racial mix."

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2. *The remedy.* Of course, in the absence of a predicate f constitutional violation, a predicate that is absent in his case, the question of a further remedy need not be con-idered. A remedy must be directed to a cure of a wrong. The wrong of segregation has been cured. A remedy here would be appropriate only if the failure to provide white-majority schools was a violation of the Constitution. But ne remedy suggested by the district court here is unaccept-ble under the authority of this Court's judgments.

It was exactly on a representation of want of a "viable acial mix" or "equal educational opportunity" that the ederal court in New Jersey was asked to redraw the county nd city lines established for school systems in that state. *pencer* v. *Kugler*, 326 F. Supp. 1235 (D. N.J. 1971). The ssence of the complaint in *Spencer*, as recited there by the istrict court, was almost identical with the essence of the omplaint lodged in this case:

> The schools . . . are racially imbalanced by reason of [a New Jersey statute] which sets school district boundaries thereby rendering racial balance mathematically impossible in many districts, thus providing unequal educational opportunities. The State has taken no steps to achieve racial balance by reason of the mathematical composition of the geographical area which comprises the school district, has not attempted to redraw school district lines to achieve racial balance, has not provided funds for compensatory education to overcome adverse educational effects of racial imbalance. The State has failed to act in the foregoing area in violation of the equal protection clause of the United States Constitution and the civil rights of the plaintiffs and the class they represent. The State is obligated to integrate all the schools or to provide compensatory education in those districts which it does not integrate. The school districts lacked the power to achieve racial balance. (326 F. Supp. at 1237).

The similarities between the facts alleged in the *New Jersey* case and the premises of the trial court's judgment here are patent. Neither the plaintiffs nor the city in their petitions come to grips with the decision in *Spencer*. So thoroughly does that decision emasculate their position that apparently they cannot bring themselves even to recognize its existence.

In *Spencer*, the three-judge court held that the relief, of the kind granted by the district court in Richmond, was beyond the competence of any federal court to order.

> It is clear that these legislative enactments prescribe school district boundaries in conformity with municipal boundaries. This designation of school district zones is therefore based on the geographic limitations of the various municipalities throughout the State. Nowhere in the drawing of school district lines are considerations of race, creed, color or national origin made. The setting of municipalities as local school districts is a reasonable standard especially in light of the municipal taxing authority. The system as provided by the various legislative enactments is unitary in nature and intent and any purported racial imbalance within a local school district results from an imbalance in the population of that municipality-school district. Racially balanced municipalities are beyond the pale of either judicial or legislative intervention. (326 F.Supp. at 1240).

It was this judgment that was affirmed by this Court in *Spencer* v. *Kugler*, 404 U.S. 1027 (1972), with only Mr. Justice Douglas dissenting.

There is no conflict between the decision of the Fourth Circuit here and any other Circuit. The judgment of District Judge Roth in Detroit is now pending on appeal in the Court of Appeals for the Sixth Circuit. *Bradley, et al.* v. *Milliken*, 40 U.S.L.W. 2841 (E.D. Mich. June 14, 1972), *appeal*

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pending, ... F.2d ..... (6th Cir. 1972) (No. 72-8002).[5] In In that case, the predicate to judicial intervention was a finding that Detroit was operating a dual school system. *Milliken* does not make any attempt to dismantle existing unitary systems to achieve a "better racial mix." Instead, Detroit is a school desegregation case in which a unitary system remained to be established. In this case, the school systems involved have already met the requirements of *Brown I* and *Swann* by the creation of unitary systems.

Implicit in the petitioners' argument is the proposition that the local government units, so long in existence in this country, are no longer efficient or desirable in our urbanized nation, ergo they are unconstitutional. They would substitute for cities and counties a series of metropolitan planning districts. With all respect, that reorganization of American government is appropriate neither for a district court nor even for this Court to decree.

On October 12, 1972, this Court heard argument on the question whether "petitioners are entitled to obtain system-wide relief to desegregate the Denver Public Schools." Brief for Respondents, at 2, *Keyes* v. *School District No. 1, Denver, Colorado, supra*. Certainly, with that as an open question, it is hard to conceive that this Court should usher in a new generation of school litigation by accepting the petitioners' assertion here that the Constitution requires extra-system relief where all the school systems in question are already operating unitary systems.

CONCLUSION

The Court ought not even to entertain the proposition offered by Petitioners here that schools with black majorities

[5] District Judge Roth's decision would seem to be inconsistent with the Sixth Circuit's more recent ruling in *Mapp* v. *Board of Education*, 41 U.S.L.W. 2207 (6th Cir. Oct. 11, 1972).

are intrinsically unequal to schools with white majorities. That proposition necessarily implies that black school children are inherently unequal to white school children. Acceptance of such proposition by this Court, as the quotation from Judge Sobeloff, *supra*, makes clear, would stand *Brown v. Board of Education*, on its head. Certiorari, therefore, should be denied.

Respectfully submitted,

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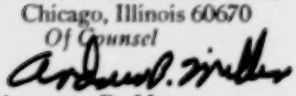

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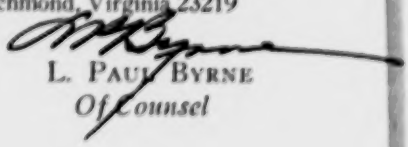

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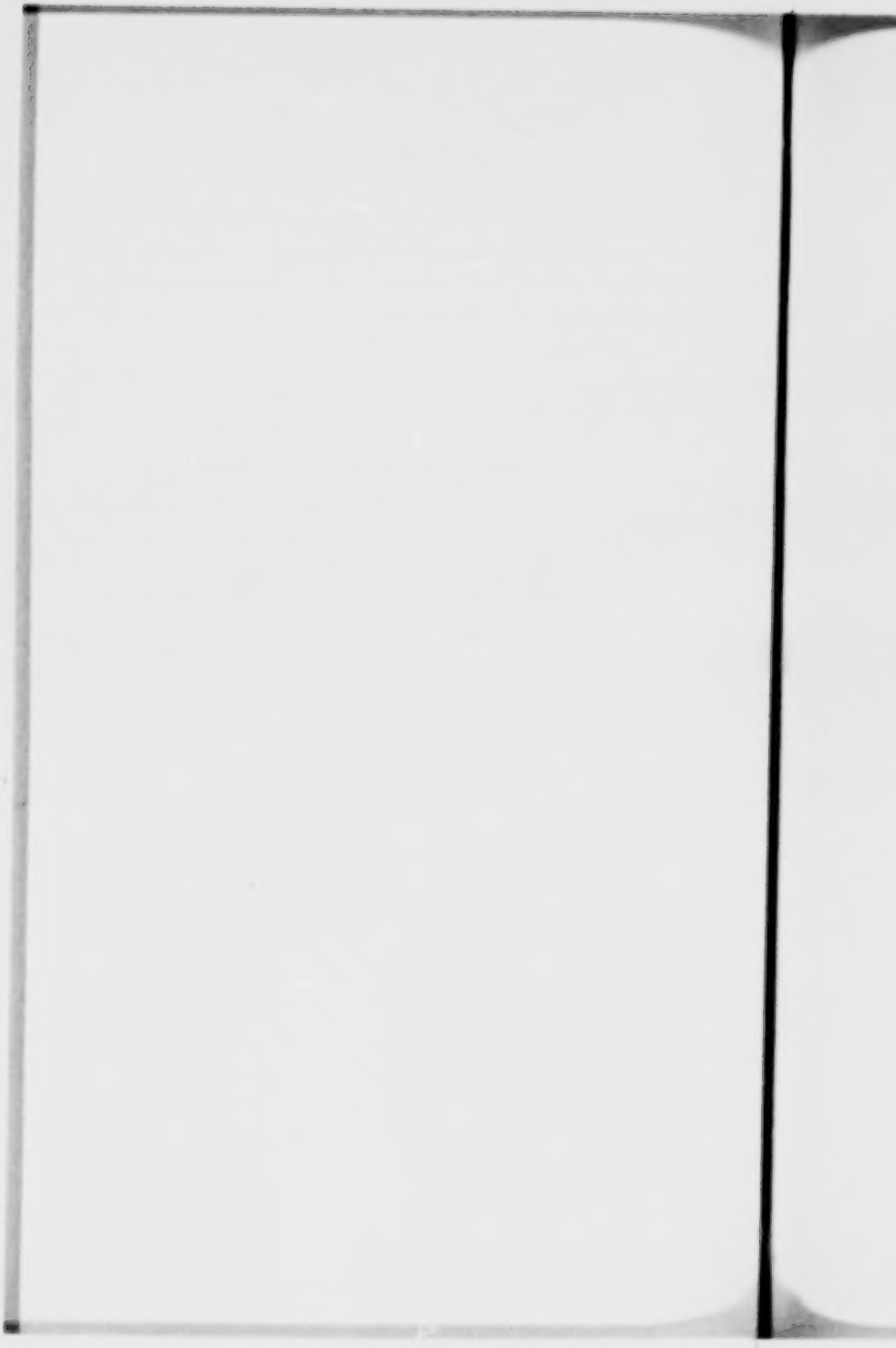

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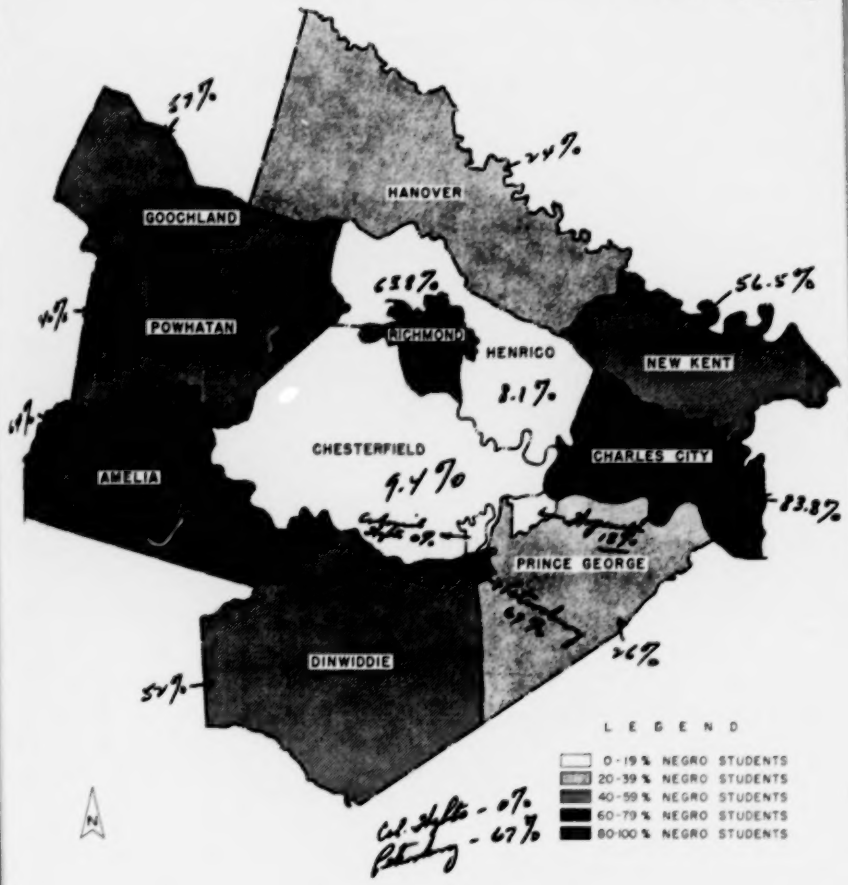
ADDENDUM "A"

CITY EXHIBIT NO. 52



NEGRO COMPOSITION OF AREA SCHOOL SYSTEMS

Richmond School Board
Exhibit No. 52A

Bradley vs. City of Richmond

TABLE 52A

NEGRO COMPOSITION OF AREA
SCHOOL SYSTEMS 1970-71

	Percent Negro Students
Amelia County	64.0
Charles City County	83.8
Chesterfield County	9.4
Colonial Heights	0
Dinwiddie County	52.0
Goochland County	57.0
Hanover County	24.0
Henrico County	8.1
Hopewell	18.0
New Kent County	56.5
Petersburg	67.0
Powhatan County	40.0
Prince George County	26.0
RICHMOND	63.8

Source: Virginia State Board of Education
November 25, 1970

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DEC 29

In The

Supreme Court of the United States

October Term, 1972

Nos. 72-549 and 72-550

SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

CAROLYN BRADLEY, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

REPLY TO PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONS FOR CERTIORARI

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STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,

Respondents.

REPLY TO PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONS FOR CERTIORARI

There is no conflict between the decision of the Fourth Circuit in the instant case and that of the Sixth Circuit

in *Bradley* v. *Milliken*, (Nos. 72-1809—72-1814, 6th Cir., Dec. 8, 1972), reproduced in Petitioners' Supplemental Brief.

1. *The two cases present different issues.* The instant case is concerned with the imposition of consolidation to assure white student majorities in each school in three separate school systems, each of which systems has already attained unitary status in full compliance with the commands of the Fourteenth Amendment and the decisions of this Court. The *Milliken* case is concerned with the question of whether Detroit is operating a unitary, rather than a dual, school system. The resolution of the instant case by this Court would not control the result in *Milliken*, nor would a resolution of *Milliken* by this Court control the result here. There can be no conflict between the Courts of Appeals in these two cases because the cases do not present the same issues.

2. *The* Milliken *decision resolved no issue involving school districts other than Detroit except the requirement of an opportunity for hearing, which was not an issue in the instant case.* The only decision reached by the Sixth Circuit in *Milliken* as to such districts was that the communities outside Detroit must be given an opportunity for hearing if the judgment were to affect them. This due process issue was all that was resolved. As the Sixth Circuit Court of Appeals said: "While agreeing with the District Court in its conclusion that it can consider a metropolitan remedy, we express no views as to the desegregation area set forth in the orders of the District Court." *Bradley* v. *Milliken*, *supra* at 68. Indeed, unless the Court of Appeals for the Sixth Circuit was engaging in a charade, it could hardly have resolved any substantive issues until the parties

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o which it was awarding a hearing had been given an pportunity to be heard. The interlocutory judgment of he Court of Appeals in *Milliken* thus resolved no issues in onflict with the decision of the Court of Appeals for the ourth Circuit in this case.

3. The only conflict which exists is within the Sixth ircuit itself. The decision of the panel of the Sixth Cir- it in *Milliken* is in conflict wth the decision of another anel of the Sixth Circuit in *Mapp* v. *Board of Education*, U.S. L. Week 2207 (6th Cir., Oct. 11, 1972) (rehearing banc granted Nov. 28; reargued Dec. 14). The con- ct which exists between those opinions relates to the oblem of desegregation within a dual school system and t to any of the questions raised in the instant case. It ould be noted that, in order to resolve this conflict, peti- ns for rehearing en banc were filed in *Milliken* on Decem- r 22, 1972.

CONCLUSION

There is no conflict between the final decision of the urth Circuit in the instant case and the interlocutory deci- n of the Sixth Circuit in *Milliken*. The petitions for tiorari should be denied.

Respectfully submitted,

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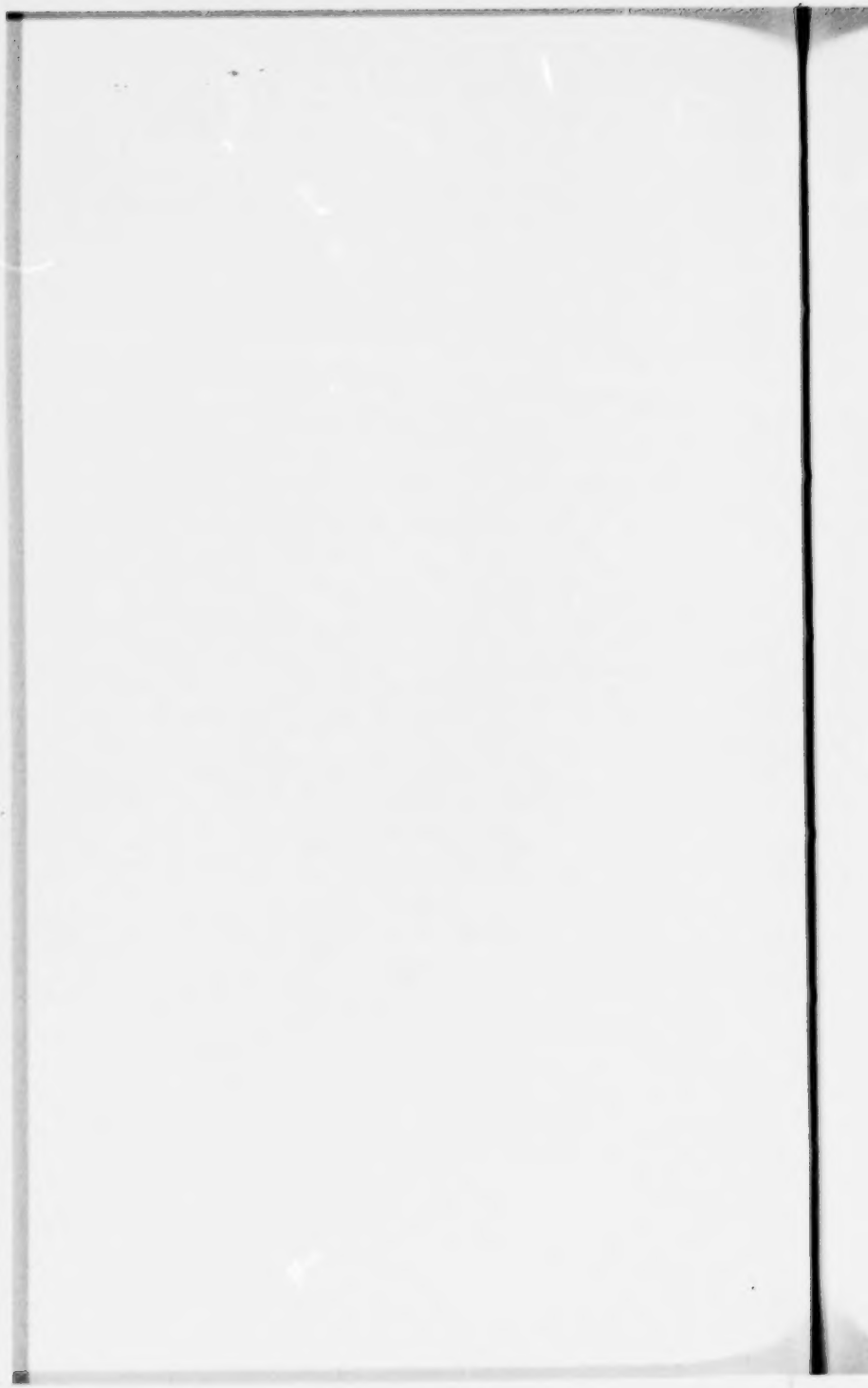

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-550

CAROLYN BRADLEY, *et al.*,

Petitioners,

vs.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-550

CAROLYN BRADLEY, *et al.*,

Petitioners,

vs.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONERS

Opinions Below

The opinions of the Court of Appeals for the Fourth Circuit are reported at 462 F.2d 1058 and are reprinted at pp. 557-602 of the Appendix to the Petition for Writ of Certiorari filed by the School Board of the City of Richmond, Virginia, et al., in No. 72-549.[1] The opinion of the

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[1] Citations in this brief in the form "A. ——" refer to the Joint Appendix filed by Petitioners in this case and No. 72-549. Trial exhibits are designated "PX" for plaintiffs', "RX" for the Richmond School Board's, "CX" for exhibits of the Chesterfield School Board or Board of Supervisors, "HX" for exhibits of the Henrico School Board or Supervisors, and "SX" for exhibits of the State Board of Education and State Superintendent of Public Instruction. In addition, citations to exhibits reprinted as part of the Appendix in a separate volume are given in the form "Ex. A. —". Citations in the form "Pet. A —" refer to the separate Appendix

United States District Court for the Eastern District of Virginia rendered on January 5, 1972 and its implementing order entered January 10, 1972 are reported at 338 F. Supp. 67 and are reprinted in the same Appendix at pp. 164-545.

Other opinions and orders of the courts below related to this litigation are reported or reprinted as follows:

1. District Court opinion and order entered August 17, 1970, approving interim plan of desegregation for Richmond, reported at 317 F. Supp. 555 and reprinted at Pet. A. 1-47.

2. District Court opinion and order entered December 5, 1970, granting motion for joinder of additional parties defendant and directing the filing of an amended complaint, reported at 51 F.R.D. 139 and reprinted at Pet. A. 48-57.

3. District Court opinion of January 8, 1971 denying motion to recuse, reported at 324 F. Supp. 439 and reprinted at Pet. A. 58-90.

4. Unreported District Court order of January 8, 1971, as entered *nunc pro tunc* January 13, 1971, on pre-trial motions, reprinted at Pet. A. 91-93.

5. Unreported District Court order of January 13, 1971 on additional pre-trial motions, reprinted at Pet. A. 94-97.

6. District Court opinion of January 29, 1971, denying motion to implement further desegregation at midyear and continuing pendente lite construction injunction in effect, reported at 324 F. Supp. 456.

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of Opinions Below and relevant state statutes filed with the Petition in No. 72-549. Citations to portions of the record not reprinted in the Joint Appendix are given by volume number and page, e.g., "28 R. 713." Transcripts of earlier hearings are cited by date and page.

7. District Court opinion and order entered February 10, 1971, declining to convene three-judge court, reported at 324 F. Supp. 396 and reprinted at Pet. A. 98-106.

8. District Court opinion and order entered February 10, 1971 denying motion to dismiss as to certain defendants in their individual capacities, reported at 324 F. Supp. 401 and reprinted at Pet. A. 107-09.

9. District Court opinion and order entered April 5, 1971 approving further desegregation plan for Richmond schools, reported at 325 F. Supp. 828 and reprinted at Pet. A. 110-55.

10. Unreported District Court opinion and order entered July 20, 1971 denying renewed motion to convene three-judge court, reprinted at Pet. A. 156-62.

11. Unreported District Court order entered September 15, 1971 denying evidentiary motion, reprinted at Pet. A. 163.

12. Unreported District Court opinion and order issued January 19, 1972 denying stay of January 10 order, reprinted at Pet. A. 546-52.

13. Court of Appeals order granting partial stay of District Court decree, entered February 8, 1972, reported at 456 F.2d 6 and reprinted at Pet. A. 553-56.

14. Amended judgment of the Court of Appeals, entered August 14, 1972, reprinted at Pet. A. 603.

Other reported opinions in this case are as follows: 317 F.2d 429 (4th Cir. 1963); 345 F.2d 310 (4th Cir.), *rev'd* 382 U.S. 103 (1965).

Jurisdiction

The opinion of the Court of Appeals was entered June 5, 1972 and its amended judgment filed August 14, 1972. On August 29, 1972, Mr. Justice Marshall extended the time within which a Petition for a Writ of Certiorari might be filed to and including October 5, 1972. The Petition was filed on October 5 and was granted on January 15, 1973. On the same date, this case was consolidated with No. 72-549 by order of the Court. The Court's jurisdiction rests upon 28 U.S.C. §1254(1).

Question Presented

Is the constitutional power of a federal court to remedy racial discrimination in the public schools confined within the geographic boundary lines of a single State-created school district in the absence of a showing of racial motivation in the drawing of the district lines?

Constitutional and Statutory Provisions Involved

The case involves the application of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

This matter also involves the Tenth Amendment to the Constitution of the United States, which reads as follows:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

Various provisions of Virginia's Constitutions of 1902 and 1971 and Virginia statutes relating to education are set out at Pet. A. 604-23. These are: Constitution of 1902, §§ 129, 130, 132, 133; Constitution of 1971, Art. VIII, §§ 1-7; Va. Code Anno. §§ 22-1, -2, -7, -30, -34, -100.1 through -100.12 (Repl. 1969); Va. Code Anno. §§ 22-1.1, -2, -7, -21.2, -30, -32, -100.1, -100.3 through -100.11, -126.1, -127 (Supp. 1972).

Statement

The basic issue in this case is whether the remedy proposed by the Richmond School Board and adopted by the district court to end racially identifiable schools in the greater Richmond area was beyond the power of the district court in view of its findings that the Richmond school system, as well as the Henrico and Chesterfield County school systems, were in violation of the Fourteenth Amendment in 1970 (when the county school authorities were joined as defendants) and at the time of final decision by the district court. We begin by describing the extent and the history of the public school segregation that the district court undertook to remedy.

I. Segregation in the Schools of the Greater Richmond Area

In 1961, at the commencement of this litigation, the schools administered by the Richmond, Chesterfield and Henrico School Boards were completely segregated. A decade later, the district court found that the same boards were still operating non-unitary systems (338 F. Supp., at 103-04, 70-72, 78-79, 169-71, 174-76, Pet. A. 237-38, 165-69, 183-84, 383-86, 393-97):

During the school year 1970-71 (when the Chesterfield and Henrico boards were added as defendants [see pp. 38-

41 *infra*]), the School Board of the City of Richmond administered 54 regular school facilities.[2] Twelve schools enrolled more than 70% white students, including six schools which were more than 90% white (RX 30; 338 F. Supp., at 232-33, Pet. A. 522-23). Four schools were attended solely by black students, an additional eight by more than 95% black students, and another three by more than 90% black students (*ibid.*). Thus, in a system of 47,988 pupils, 64.2% of whom were black (RX 75, Ex. A. 21; Pet. A. 417), nearly one-quarter of the schools were more than 70% white (half of these more than 90% white) and another quarter of the schools enrolled in excess of 90% black students.[3]

During the same 1970-71 school year, the Chesterfield County School Board operated 39 schools, of which nineteen were more than 90% white and one over 99% black (PX 115; 338 F. Supp., at 234-36, Pet. A. 524-26). The black school retained an all-black faculty while six other Chesterfield County schools had no black faculty members, and an additional nine schools had only one black faculty

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[2] Excluding programs and classes for handicapped, special education students, etc.

[3] This was the result obtained from the implementation of a partial plan of desegregation limited to the City schools pursuant to an August 17, 1970 decree of the District Court (Pet. A. 1-47). In comparison, during the 1969-70 school year, prior to the issuance of the first judicial decree in this lawsuit which required the City School Board to assign students mandatorily to achieve desegregation (see pp. 36-37 *infra*), the City Board operated 61 facilities: 22 were all-black and six others more than 90% black; two were all-white and 17 more than 90% white; and faculties were similarly segregated (RX 30; 338 F. Supp., at 232-33, 240-42, Pet. A. 522-23, 530-32, 6-7).

member (PX 102; 20 R. 132a-35, 338 F. Supp., at 170, 234-36, Pet. A. 384, 524-26).[4]

During the 1970-71 school year, the Henrico County School Board was responsible for the operation of 39 schools. Twenty-eight were more than 90% white but Central Gardens Elementary School was over 96% black, and enrolled more than two-fifths of all black elementary students residing in the system (PX 116; 338 F. Supp., at 175, 237-39, Pet. A. 395, 527-29). Central Gardens had the largest proportion of black faculty members of any facility operated by Henrico, while ten schools had no blacks on their faculties and another 20 had only one black staff person (PX 116; 338 F. Supp., at 176, 237-39, Pet. A. 397, 527-29).[5]

To summarize, of 132 schools operated during the 1970-71 year by the three local boards, 53 had student bodies more than 90% white; 17 schools were more than 80% black.[6] All but three of the black schools were located within the City of Richmond,[7] and all but six of the 90%-

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[4] During the 1968-69 school year, Chesterfield operated 9 all-black schools, and during the 1969-70 school year, 5 all-black or virtually all-black facilities (PX 115; 338 F. Supp., at 234-36, Pet. A. 524-26). The reduction in number was brought about by closing the black schools as part of an HEW-approved plan (PX 118, pp. 214, 217-18).

[5] Henrico in 1968-69 had 5 all-black or more-than-90%-black schools (PX 116; 338 F. Supp., at 237-39, Pet. A. 527-29). Four of these five schools were closed at the end of the 1968-69 school year after HEW commenced enforcement proceedings, leaving Central Gardens virtually all-black during the 1969-70 and 1970-71 years (*ibid.;* PX 120, pp. 318-19, 321-22).

[6] The overall student population was 33.7% black, a change of only one-tenth of one percent from the figure of the previous decade (RX 78; Ex. A. 26; Pet. A. 418).

[7] One black school was administered by the School Board of Richmond but located in Henrico County; another black school facility was located partly within Henrico County (338 F. Supp.,

white schools in the surrounding counties.[8] Schools of substantially differing racial composition were located within reasonably short distances of each other (two to five miles): in most instances, the boundary line between the Richmond and county systems fell between them. The following Table comparing the enrollments of neighboring Richmond and Henrico schools by race in 1970-71 is illustrative:

TABLE 1[9]

Enrollments of Selected Richmond and Henrico Schools, 1970-71, and Distances Between Them

Richmond		*Distance (miles)*	*Henrico*	
School	*% Black*		*School*	*% Black*
Armstrong High	75%	5.0	Highland Springs High	13%
Kennedy High	93%	4.9	Henrico High	4%
John Marshall High	73%	1.4	Henrico High	4%
Mosby Middle	95%	3.6	Fairfield Jr. High	18%
East End Middle	68%	3.6	Fairfield Jr. High	18%
Fulton-Davis Elem.	53%	1.8	Montrose Elem.	0%
Mason Elem.	100%	3.1	Adams Elem.	14%
Highland Park Elem.	90%	1.3	Glen Lea Elem.	1%
Stuart Elem.	91%	2.2	Laburnum Elem.	20%

Because of the 1970 annexation of a portion of Chesterfield County containing several white schools, the new Rich-

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at 172, Pet. A. 388; *cf.* 24 R. 69; PX 117, 338 F. Supp., at 164, Pet. A. 371 [1954 request by Richmond Board for permission of Chesterfield Supervisors to build white Richmond high school in the county]; A. 581; PX 120; 338 F. Supp., at 172, Pet. A. 388 [1957 action of Henrico Board directing its Superintendent to negotiate with Richmond to permit Henrico black students to attend Richmond schools]).

[8] Approximately 85% of all black pupils in the area were assigned to schools administered by the Richmond Board.

[9] Derived from PX 97, 97A; *see* 338 F. Supp., at 190, Pet. A. 428-29; 23 R. 30-36.

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mond-Chesterfield boundary line did not separate Richmond and Chesterfield schools of markedly different racial composition during the 1970-71 school year. However, the previous boundary line fell between such schools. For example, Richmond's Franklin Elementary School (100% black in 1969-70) is shown by the maps (RX 64, Ex. A. 27) utilized by the Richmond School Board in presenting its proposed plan (see pp. 46-48 *infra*) to have been within three miles of the sites of Chesterfield County's Green Elementary School and Redd Elementary School (100% white and 92% white, respectively, in 1969-70).

The decree proposed by the Richmond School Board and approved by the district court to disestablish these segregated schools is described more fully below (see pp. 42-49 *infra*). It suffices here to note that that decree—whose lawfulness is the issue before this Court—sought to desegregate all of the schools, no matter which side of the boundary lines they fell. The decision of the Court of Appeals reversing that decree and restricting the desegregation process to the Richmond side of the boundary lines essentially perpetuates the pre-1971 pattern of black Richmond schools closely adjoining white county schools, as illustrated by Table 2. Indeed, there would be an even greater number of schools of substantially differing racial composition located within short distances of one another, separated by the Richmond boundary:

TABLE 2

Enrollments[10] *of Selected Schools Adjoining Each Other On Either Side of Richmond Boundary*

Richmond School		*County School*	
School	*% Black*	*School*	*% Black*
Armstrong High	72%	Highland Springs High	13%
Kennedy High	88%	Henrico High	4%
John Marshall High	78%	Henrico High	4%
Mosby Middle	86%	Fairfield Jr. High	18%
East End Middle	66%	Fairfield Jr. High	18%
Fulton Elementary	50%	Montrose Elem.	0%
Mason Elementary	83%	Adams Elem.	30%
Highland Park Elem.	84%	Glen Lea Elem.	30%
Stuart Elem.	79%	Laburnum Elem.	20%
Wythe High	57%	Manchester High	5%
Elkhardt Middle	45%	Providence Interm.	2%
Broad Rock Elem.	57%	Falling Creek Elem.	0%
Oak Grove & Annex Elem.	42%	Chalkley Elem.	5%
Southampton Elem.	68%	Crestwood Elem.	1%
Fisher Elem.	68%	Bon Air Elem.	3%

[10] The record contains 1971-72 enrollment data only for the Richmond schools together with projected 1971-72 enrollments for the schools paired with Central Gardens in Henrico County. The figures listed for the other county facilities are those of the 1970-71 school year, the latest in the record. We believe the significance of the comparison for 1971-72 remains substantially accurate since neither county planned any change in method of pupil assignment between 1970-71 and 1971-72 (with the exception of the attempt to sever all formal ties between the Chesterfield County School Board and the Matoaca Laboratory School [A. 1021-24] and the Central Gardens pairing [RX 88; A. 961], the results of which are reflected in the Table). We further note that the same comparison was made by the Court of Appeals in connection with its conclusion that when the two steps referred to parenthetically above were taken, each of the county systems would be "unitary," as the Court of Appeals used that term (462 F.2d, at 1065, Pet. A. 571-72).

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The net result of the Court of Appeals' ruling is that, out of 131 schools which would now be operated by the three local boards, 44 would be attended by more than 90% white students, and 11 by more than 80% black students. *All* of the black schools would be part of the Richmond system, and *all* of the white schools would be in the counties.

A. *Maintenance and Expansion of the Dual School Systems*

1. Delays in Compliance with *Brown*

The development of identifiable white schools and black schools within the greater Richmond area was not adventitious. Prior to *Brown* v. *Board of Education*, 347 U.S. 483 (1954), Virginia's public schools were racially segregated by statute. Following *Brown*, none of the three school boards in the Richmond region made any move to end their traditional segregatory practices until required to do so by either judicial or administrative proceedings.[11] In both Richmond City and Chesterfield County, the first modification of the pre-*Brown* form of dual system resulted from federal judicial decrees requiring the local boards and the State's pupil placement agency (see p. 19 *infra*; Appendix E *infra*) to allow certain individual black pupils to transfer to white facilities from the black schools to which they had been assigned. In Henrico, no desegregation occurred until after the passage of the 1964 Civil Rights Act (PX 115, 116, 120; 338 F. Supp., at 173, Pet. A. 390-91;[12] 317 F.2d 429 [4th Cir. 1963]; *McLeod* v. *County*

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[11] This is not surprising in light of the encouragement local authorities were given by State officials to resist compliance with the law (see p. 21 *infra*).

[12] The ruling of the District Court (338 F. Supp., at 67-248, Pet. A. 164-545) contains extensive detailed findings of fact (338 F. Supp., at 116-230, Pet. A. 185-532) including specific findings as to matters about which there is little dispute, such as the time when the first desegregation occurred. The District Court on several occasions expressed its dismay that such factual matters

School Bd. of Chesterfield County, Civ. No. 3431 [E.D. Va.]).

From 1954 to 1966, the Richmond School Board persisted in maintaining all its policies and practices of the pre-*Brown* era except insofar as judicial decrees required their abandonment. White students and black students were assigned to white schools and black schools, respectively, without any change until 1961. At that time, pursuant to a federal court decree, black children who complied with pupil placement procedures were permitted to transfer to white schools but initial assignments by the School Board continued to be made on a segregated basis.

In 1966 the Richmond Board agreed to a consent decree in this litigation which, while embodying a freedom-of-choice plan of pupil assignment, also committed school authorities to examine other methods of student assignment if significant desegregation did not occur. No such action was ever taken. Yet in 1970, after a motion for further relief had been filed, the School Board conceded that its free choice plan did not meet constitutional requirements[12] (338 F. Supp., at 70-72, Pet. A. 165-69). The Board then embraced a plan based strictly on geographic zoning, although aware of the drastic residential segregation within the City of Richmond (338 F. Supp., at 74-75, Pet. A. 173-76). Not until 1971-72 did the Richmond Board propose a plan of mandatory, race-conscious pupil assignments to all Richmond schools for desegregation (338 F. Supp., at 78-79, Pet. A. 182-83; Pet. A. 119-27).

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could not be stipulated (*e.g.*, 25 R. 14, 62) but since they were not, undertook to make the requisite specific findings. For this reason, and given the enormity of the record and the necessity to limit the Joint Appendix, insofar as possible, to manageable dimensions, we shall from time to time refer the Court to the lower court's findings on factual matters rather than the record.

[12] *Green* v. *County School Bd. of New Kent County*, 391 U.S. 430 (1968).

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Faculty and staff continued to be assigned to particular schools on the basis of their race and that of the student body (338 F. Supp., at 72, Pet. A. 168-69);[14] affirmative reassignments of faculty and staff in a manner designed to eradicate the racial labelling of schools accomplished through past practices did not commence until the 1970-71 school year.

The Richmond Board also promoted continuation of the dual system through the rapid transformation of schools from white to black. Prior to 1960, it had formally redesignated white schools as black. Thereafter, under its free choice plan, it acquiesced in the wholesale transfer of remaining whites away from schools of increasing black concentration.[15] School site locations continued to be chosen so as conveniently to serve predominantly one-race residential areas, or without consideration of the tendency of the locations to perpetuate or aggravate school segregation in view of pre-existing residential segregation (338 F. Supp., at 75-76; Pet. A . 177; 324 F. Supp. 456, 461-69).

Next door in Chesterfield County, the county school board and the Board of Supervisors had repeatedly memorialized their support of the various "massive resistance" tactics (see pp. 18-21 *infra*) developed and implemented by Virginia state officials to avoid school desegregation following *Brown* (PX 117, pp. 82, 97; PX 118, pp. 76-79, 82; 338 F. Supp., at 167-68, Pet. A. 377-81). The School Board

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[14] This pattern continued even after this Court *in this case* held the plaintiffs had standing to challenge continued racial faculty assignments, *Bradley* v. *School Bd. of Richmond*, 382 U.S. 103 (1965), and continued in substance even after the School Board pledged in the 1966 consent decree, see p. 36 *infra*, that it would take steps to desegregate faculties.

[15] See Chart from Richmond School Board's submission of "HEW" plan in 1970; 317 F. Supp. 855, and relevant testimony of Superintendent, 6/19/70 Tr. 248-53.

continued to refer to its schools as white schools and "colored schools" (A. 528; PX 93, 117; RX 92; 338 F. Supp., at 135-37, Pet. A. 307-12), and to assign faculties accordingly (see 338 F. Supp., at 234-36, Pet. A. 524-26).

Although a 1962 federal district court decree required the Chesterfield Board and the Pupil Placement Board (see p. 19 *infra*) to admit certain black pupils to the formerly white facilities for which they had made application,[16] the Board took no steps of its own to bring about any desegregation until after the passage of the 1964 Civil Rights Act.[17] It finally agreed in 1966 to adopt a freedom-of-choice proposal (PX 118; 338 F. Supp., at 168-69, Pet. A. 381) after having first sought to convince the Department of Health, Education and Welfare that the Chesterfield schools were in compliance with the Act because they were operated pursuant to the 1962 decree (which applied to the named plaintiffs only) (*ibid.*). That year the Board administered 47 schools, including an all-black secondary school serving the entire county and eight all-black elementaries (PX 115; 338 F. Supp., at 234-36, Pet. A. 524-26). These schools remained all-black while freedom-of-choice was in effect (*ibid.*). All faculties were completely segregated except for one white teacher at a black school, and one black teacher at a white school (*ibid.*).

In 1968, after having been advised by the Department of HEW that the school system faced termination of federal funding because of the failure of the free choice plan to

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[16] *McLeod* v. *County School Bd. of Chesterfield County*, Civ. No. 3431 (E.D. Va.).

[17] There were no further proceedings in the *McLeod* case after the 1962 decree, which was not accepted by the Department of Health, Education and Welfare as evidence of compliance with the Act. See text *infra*. Accordingly, the Department undertook Title VI enforcement.

bring about effective desegregation, the Chesterfield School Board proposed closing eight of the nine all-black elementary schools effective with either the 1968-69 or 1969-70 school year, and the establishment of geographic zones for the formerly white facilities (PX 118, pp. 214, 217-18). The ninth black elementary school was still all-black at the time of the hearing below (PX 115; 338 F. Supp., at 236, Pet. A. 526). While the faculties of the closed black schools were generally absorbed within the system, most of the principals were assigned to lesser positions at the white schools (20 R. 85-89, 105-09). Extensive segregation in the assignment of faculties is apparent through at least the 1969-70 school year (338 F. Supp., at 234-36, Pet. A. 524-26; PX 115).

A similar course of events occurred in Henrico County: continuation of segregation policies after 1954 (*e.g.*, PX 120, p. 141 [segregated faculty conferences]) together with expressions of support for the State's anti-desegregation efforts (*Id.* at p. 89; PX 121, at p. 83). The first desegregation in the county did not occur until after the passage of the 1964 Civil Rights Act; then, from 1965-66 through 1968-69 the schools were operated under a freedom-of-choice plan (PX 120, pp. 212, 218, 267, 285-89). Of 42 schools administered in 1966-67, four elementary schools and a county-wide secondary school remained all-black. Faculties were completely segregated. (338 F. Supp., at 237-39, Pet. A. 527-29). The Board of Supervisors denied assertions by HEW that county black schools were inferior facilities offering inadequate programs (PX 121, p. 15; 338 F. Supp., at 174, Pet. A. 392-93); but the School Board's response to the commencement of administrative proceedings to terminate federal funding to the county school system in 1968 was to propose the closing of all of these schools beginning in the 1969-70 school year, and the en-

largement of the zones for adjacent white facilities (PX 120, pp. 318-19, 321-22). The School Board did not propose to desegregate Central Gardens Elementary School although it was over 90% black (see 338 F. Supp., at 239, Pet. A. 529).

As late as the 1970-71 school year, two-fifths of Henrico's black elementary school students were assigned to the virtually all-black Central Gardens School, which also had the greatest concentration of black faculty members throughout the system (*Ibid.*; 23 R. 13). Indeed, while it was continuing to operate its other black facilities as late as the 1968-69 school year, the Board was increasing the black faculty component at Central Gardens as the number of black students increased (PX 116; 338 F. Supp., at 175, 238, Pet. A. 395, 529).

2. Perpetuation of the Dual System Through School Construction

The period since Brown has seen a steady increase in pupil population in the three divisions; from 1961 to 1971 alone, the number of pupils in the greater Richmond area increased by nearly 24,000 (RX 78, Ex. A. 26; 338 F. Supp., at 185, Pet. A. 418). School construction programs which responded to this growth extended and entrenched segregation in the public schools.

Virtually none of the new facilities built in any of the three school divisions since 1954 opened with any substantial degree of desegregation (HX 29; PX 116, 117; 338 F. Supp., at 232-42, Pet. A. 522-32; Answers to Interrogatories, 3 R. 653, 4 R. 10; 324 F. Supp., at 461-69). Indeed, applications submitted to the State Department of Education for approval of construction projects long after 1954 continued to characterize proposed facilities as intended for black or white students (RX 90, 92; PX 117, p. 133;

PX 118, pp. 107, 111-12, 116, 132, 137, 169; 338 F. Supp., at 127-38, Pet A. 289-313). No consideration was given, in the process of site selection, to the effect of placing new schools in residentially segregated settings. School construction and expansion in Henrico, for example, was repeatedly premised upon Negro population increases in specific areas of the county (RX 90; see 29 R. 167-80). And none of the new Chesterfield school construction in the planning stages at the time of trial in 1971 had been developed with any consideration of its effects upon desegregation (A. 494).

Virginia state officials' role in school construction was direct. Their approval of sites and building plans was required before bonds could be sold, state construction aid funds released, or facilities erected (21 R. 82, 89-92; PX 117, PX 122, pp. 63, 115-19, 158; RX 83, p. 26; 338 F. Supp., at 124-26, Pet. A. 283-86). The responsible state officials published a planning handbook designating criteria to be used by local administrators in evaluating plans for additional construction. But they did not require that the impact of proposed new construction in perpetuating segregation or retarding desegregation be considered.[18] While the State Superintendent did notify local officials of a 1968 judicial decision requiring that school planning take account of the effects of new locations upon desegregation,[19] that consideration was never incorporated into the State's evaluation process (A. 513-14), and the current planning handbook makes no mention of it (SX 4, § 10.31).

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[18] Not only did the handbook contain no such requirement, but in actual practice the State officials were as derelict as local administrators in assessing impact on segregation. *E.g.*, RX 90; 338 F. Supp., at 130, Pet. A. 295-96).

[19] *United States* v. *Board of Public Instruction of Polk County*, 395 F.2d 66 (5th Cir. 1968).

3. The Role of the State

Segregatory institutions and policies dating from the era prior to 1954 continued to be supported by State authorities long after this Court's decision in *Brown*. Black regional schools created and maintained with the assistance of the State Board of Education (PX 122, pp. 70a-71; 338 F. Supp., at 155-57, Pet. A. 352-56) remained in operation as late as 1968. No action was taken by State authorities either to desegregate or to close them (21 R. 132); indeed, the State Board approved expansion of one such facility in 1955 (PX 119, p. 44; PX 122; 338 F. Supp., at 157, Pet. A. 355). The State Education Department continued to hold its statewide conferences on a segregated basis until 1965 (PX 122, pp. 230, 237, 240, 251, 267, 280-81; A. 535). Prior to the passage of the Civil Rights Act of 1964, the State Board of Education (which had responded to *Brown* by officially opposing it and endorsing "massive resistance" devices under legislative consideration at the time (PX 119, pp. 42-43; 338 F. Supp., at 139, Pet. A. 316)), designated no Education Department staff personnel to work with local divisions to accomplish integration because, as an Assistant State Superintendent agreed, in the 1950's Virginia was not desegregating its schools (A. 679-80). And, as noted above, assessment of school construction proposals for their impact upon desegregation has *never* been made a part of the State's review procedures.

The State intervened directly to maintain segregation, however. Immediately after the *Brown* decision, the State Board and Superintendent directed local districts to operate as they had, until Virginia's school segregation laws were changed (PX 122, pp. 161-64; PX 119, pp. 42-43; RX 82, 83; A. 525-27, 533-35). They never were.

Instead, the 1956 Virginia Legislature enacted a series of measures designed to prevent school desegregation. It

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began with an interposition resolution[20] attempting to nullify *Brown*. It authorized the Governor to close any school which became integrated,[21] whether by local initiative or federal court order.[22] It withdrew pupil assignment power from the local school division Boards[23] and vested all authority over assignments in a newly created independent agency known as the State Pupil Placement Board[24] in order to preserve segregation[25] (PX 122, p. 171). The Board continued to function until 1968 (23 R.

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[20] Va. Acts 1956, S.J.R. 3, p. 1213, 1 Race Rel. L. Rep. 445.

[21] Va. Acts 1956, Ex. Sess., ch. 68, p. 69; 1 Race Rel. L. Rep. 1103. See PX 144-I; 338 F. Supp., at 243-44, Pet. A. 533-36.

[22] Exercising this authority in 1958, the Governor ordered the State Police to prevent the enrollment of seventeen Negro students in six formerly white Norfolk schools (PX 144, p. 122; 338 F. Supp., at 140, Pet. A. 318).

[23] A December 29, 1956 telegram from the Pupil Placement Board to then Chesterfield County Superintendent of Schools Fred D. Thompson began:

> Under the provisions of Chapter 70, Acts of Assembly, extra session of 1956, effective December 29, 1956, the power of enrollment or placement of pupils in all public schools of Virginia is vested in the Pupil Placement Board. The local school board, Division Superintendents, are divested of all such powers.

(A. 521-22; PX 122, p. 91).

[24] The State Department of Education undertook to publicize the regulations and procedures of the Pupil Placement Board (PX 122, p. 171; A. 522-24) and one of its employees also served the Placement Board on a part-time basis (A. 693).

[25] See PX 144-F; 338 F. Supp., at 138, Pet. A. 313-14 [letter from Attorney General]; *Adkins* v. *School Bd. of Newport News*, 148 F. Supp. 430 (E.D. Va.), *aff'd* 246 F.2d 325 (4th Cir.), *cert. denied*, 355 U.S. 855 (1957). Compare the Attorney General's reference to a "state-wide policy" with the following passage from the Brief for Appellees in No. 3, *Davis* v. *County School Bd.*, O.T. 1954, at p. 15:

> In general, education in Virginia has operated in the past pursuant to a single plan centrally controlled with regard to the segregation of the races.

58-59; 338 F. Supp., at 138, Pet. A. 313);[26] but, following invalidation of the Governor's school-closing powers by the Virginia courts in 1959,[27] the Legislature vested those same powers in the local school boards.[28]

The 1956 legislature also passed tuition grant legislation (338 F. Supp., at 141, Pet. A. 321). In 1958 the State Board of Education adopted regulations for the distribution of tuition grants, specifying their availability to pupils desiring to avoid attending desegregated public schools operated by the division of their residence (PX 122, pp. 181, 188; PX 119, p. 74; 338 F. Supp., at 141-42, Pet. A. 321-22). The program was expanded by enactment in 1960 of a pupil scholarship statute making grants available to attend nonpublic schools (PX 122, p. 210; 338 F. Supp., at 142-43, Pet. A. 323-25), and providing that the cost would be shared by the State and the local division. The act called for deduction of a local division's share of grants from State aid funds otherwise due it, if it refused to participate in the scholarship programs and thereby forced the State to make the full payment to individual parents (PX 122, pp. 213-17, 225-26).

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[26] In 1960 the General Assembly authorized local divisions to resume making pupil assignments in accordance with criteria to be promulgated by the State Board of Education. Va. Code Anno. §§ 22-232.18 to -.31. The following year, the State Board adopted regulations virtually identical to those of the Pupil Placement Board (PX 122, p. 218; A. 523-24).

[27] In *Harrison* v. *Day*, 200 Va. 439, 106 S.E.2d 636 (1959), the Supreme Court of Appeals of Virginia held the statute unconstitutional under the Virginia Constitution insofar as it authorized a State officer to discontinue local schooling over the objections of a division board.

[28] Va. Acts 1959, Ex. Sess., ch. 32, p. 110. The Virginia courts subsequently upheld the power of a division board to close all of its schools rather than desegregate them. *School Board of Prince Edward County* v. *Griffin*, 204 Va. 650, 133 S.E.2d 565 (1963). *Compare James* v. *Almond*, 170 F. Supp. 331 (E.D. Va.), *app. dism'd*, 359 U.S. 1006 (1959); *Griffin* v. *County School Board*, 377 U.S. 218 (1964).

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Meanwhile, the State made the services of its legal officers available to divisions resisting school desegregation efforts, and shared in the cost of retaining private counsel to fight desegregation suits. This financial support of segregation continued through the date of the District Court's decision below (PX 122, pp. 287-88, 304; PX 149, 149A, 149B, 149D, 149E; 338 F. Supp., at 155, Pet. A. 351). The State Department of Education circulated the anti-desegregation speeches of Virginia Governors (PX 122, p. 327; RX 83, pp. 38-41; 338 F. Supp., at 148, Pet. A. 336), but not information about the decisions of this Court which successively spelled out the scope of the constitutional duty to desegregate (A. 717-20; 338 F. Supp., at 155, Pet. A. 350). It supported continuing segregation in many ways: for example, by assisting Henrico to redraw segregated pupil transportation routes in 1957 (PX 120, pp. 102-38) and by making retroactive tuition grants to Prince Edward County whites in 1964 (PX 119, pp. 87-88; 338 F. Supp., at 143-44, Pet. A. 326).

Passage of the Civil Rights Act of 1964 and execution of a compliance agreement between the United States Department of Health, Education and Welfare and the State Department of Education brought little change. Not only did the State fail to take affirmative action to facilitate desegregation, but it threw roadblocks in the way of HEW enforcement.[29] The tuition grant and pupil scholarship programs continued (PX 112). No sanctions were brought to bear at the State level against divisions which refused

[29] In 1971 the State Board of Education still denied it had an affirmative duty to assist in the creation of unitary systems throughout the Commonwealth (A. 95, 113 [¶ 11]). *Compare* PX 96, Ex. A. 75, wherein the Assistant Attorney General of the United States expressed the view to State Superintendent Wilkerson that "the State Board of Education is the appropriate agency to be called upon to adjust the conditions of unlawful segregation and racial discrimination existing in the public school systems of Virginia . . . ."

to cooperate with HEW (A. 684-88, 700-01). The only official within the State Education Department with responsibility for desegregation efforts was critical of HEW (PX 136; 338 F. Supp., at 148, Pet. A. 336-37) and sought to have the Department make HEW's job as difficult as possible (PX 123; RX 87; PX 136A; A. 681-84; 338 F. Supp., at 152-53, Pet. A. 344-36). Despite the State's assurance in its agreement with HEW that it would secure and facilitate local school-division compliance with non-discrimination requirements (SX 7), it left matters entirely up to division officials (PX 144-G; 338 F. Supp., at 149, Pet. A. 337-38). And the State stood by while the ranks of black principals and teachers were decimated in the process of such desegregation as occurred at all (PX 139; A. 930-31; 338 F. Supp., at 155, Pet. A. 351-52).

4. Crossing Division Lines for Segregation

Of particular significance to this case are the many instances in which black and white students were assigned across school division lines to maintain school segregation. Three regional high schools for Negro students established with State approval and support [30] continued to operate a decade after *Brown* (PX 109; RX 86, Ex. A. 79).[31] Such

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[30] For example, in 1946 the State Board of Education contributed $75,000 toward the cost of building the Carver High School to serve Negro students from Orange, Madison, Greene, Rappahannock, and Culpeper Counties (RX 82, p. 2; 338 F. Supp., at 155-56, Pet. A. 352).

[31] Carver (see n. 30 supra), Manassas (serving Prince William, Fairfax, Fauquier Counties), Christiansburg Institute (serving Montgomery County, Pulaski County, and Radford City). A fourth regional high school, Jackson P. Burley (serving Charlottesville and Albemarle County) operated until the 1959-60 school year (A. 510, PX 109; RX 86, Ex. A. 79). Many other joint schools for black students were countenanced in Virginia, including those operated by the Lancaster and Northumberland County divisions, and the Rockbridge and Lexington divisions (see 338 F. Supp., at 155-57, Pet. A. 352-56). See A. 508-09.

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facilities were jointly administered by up to five school divisions, which sent all of their black students to the school. Often, travel distances were great:[32] in several instances, black students had to be housed in dormitories during the week to avoid inordinate daily transportation (PX 119, pp. 15, 19, 23; PX 122, pp. 70a-71; 338 F. Supp., at 157, Pet. A. 356). Where school divisions did not construct regional facilities, they often sent Negro pupils to classes in other districts by contractual agreement (PX 94, pp. 4, 7-8, 20, 30-31, 34-35, 39-41, 45, 49, 50, 57, 60; 338 F. Supp., at 159-61, Pet. A. 360-64).[33] This practice continued, in some instances, until 1969—and even involved the transportation of blacks to West Virginia or Tennessee districts to preserve segregation (*ibid.*)

Large numbers of individual student transfers across school division boundaries to attend segregated facilities resulted from the tuition grant and pupil scholarship programs (see p. 20 *supra*).[34] For example, within a few months after the Norfolk schools were closed,[35] nearly 6,500 grant applications had been approved to permit Norfolk students to attend South Norfolk and other school systems (PX 119, pp. 60-65; 338 F. Supp., at 142, Pet A. 323). The funds were used to permit students to attend out-of-State schools as well (PX 110, 111). From 1954 to

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[32] The Carver High School, for example, served five counties and a total area of 1338 square miles. See A. 508-10.

[33] The district court's opinion details numerous examples from the exhibits in the case at 338 F. Supp. 159-61, Pet. A. 360-64.

[34] The 1960 statute contained a declaration of legislative purpose stating that

> it is desirable and in the public interest that scholarships should be provided from the public funds of the State for the education of the children in non-sectarian private schools in or outside, and in public schools located outside, the locality where the children reside. (A. 938).

[35] See note 22 *supra* and accompanying text.

1971, almost $25 million in State and local funds were expended under the grant and scholarship programs (PX 112; 338 F. Supp., at 145, Pet A. 329); substantial amounts were paid to Richmond, Henrico and Chesterfield students (PX 101, 112, 117, 118, 120; 338 F. Supp., at 145, Pet A. 329-30).

Pupils have crossed lines to attend segregated schools through a variety of other means. For example, as previously noted,[36] a black Richmond high school is located within Henrico County, and a black elementary school partly within the county. As the result of annexations, numbers of students have temporarily attended classes in school divisions in which they did not reside, on a segregated basis. The 1970 annexation decree, for example, provided that some Chesterfield residents would attend schools now located within the Richmond system during a transitional period. As long as those schools remained identifiably white, no difficulty ensued; but after Richmond implemented its interim plan of desegregation[37] for the 1970-71 school year, the County Superintendent publicly invited county residents attending Richmond schools to return and enroll in county schools (A. 485-90).

B. *The Metropolitan Context*

We have several times spoken in this Brief of the "greater Richmond area." We now summarize the evidence which supports that characterization and describes the two principal relevant features of the Richmond-Chesterfield-Henrico complex: (1) intense and increasing cohesion as a single, functioning economic and social community, marked, however, by (2) intense and increasing differentials in racial concentration as between the City and its two surrounding counties.

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[36] See note 7 *supra.*

[37] See note 4 *supra;* pp. 36-37 *infra.*

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1. Unity of the Metropolitan Area

The City of Richmond, encompassing approximately sixty-three square miles, lies nearly at the geographic center of the area made up by the Counties of Henrico (244 square miles) and Chesterfield (445 square miles), which surround the City on all sides. Other counties to the north and south of Henrico and Chesterfield, respectively, are separated from this greater Richmond region in whole or in part by the Appomattox and Chickahominy Rivers (see maps at Ex. A. 27-31).[38] Virtually all of Henrico and most of Chesterfield County[39] lie within thirty minutes' travel of Capitol Square in Richmond, using regular streets and averaging twenty to forty miles per hour (A. 154-56; RX 60, Ex. A. 13; HX 36-A).

The two counties and Richmond are highly interrelated and mutually dependent. As is typical of most urban areas,[40] the central core city has ceased to register increases in population in the decennial censuses; the major population growth from 1950 to 1960 occurred in Henrico County, and in 1960 to 1970 in Chesterfield County (A. 156-57; PX 17, Plates 8, 10-11, 15; RX 46; CX 21; HX 24). The most densely populated areas of each county are contiguous to Richmond (PX 17, Plates 17-24; HX 38, 38-A; see also,

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[38] The entire area was originally a part of Henrico (A. 798); Richmond and Chesterfield County, among other political entities, were created from it. Subsequently, the city annexed various portions of each county (HX 5; CX 2).

[39] This includes all of the areas which, under the plan approved by the district court (see pp. 46-49 *infra*), would send any students to a school or schools presently located within the boundaries of the City of Richmond (see A. 236; RX 95). Although parts of Chesterfield County are also within thirty minutes' travel time of other Virginia municipalities (CX 20), there was no showing of the same degree of mutual interdependence that exists between the county and Richmond.

[40] See discussion at pp. 55-60 of the Petition for Writ of Certiorari in this matter.

PX 17, Plates 42-44). The 1970 Census reveals a total population of 480,840: 249,430 in Richmond, 154,364 in Henrico and 77,046 in Chesterfield.[41]

A variety of historical, economic and social indicators demonstrates the close functional unity of the region despite its division into three independent political entities. For example, evidence introduced at the trial indicates that prior to the 1970 annexation,[42] over three-quarters of the jobs in the region (78% of those covered by Virginia's unemployment compensation program) were in Richmond (RX 55, Ex. A. 3) and that half or more of the residents of each county worked in Richmond (A. 160-61).[43] 1970 Census data[44] confirms the continuation of these patterns.[45]

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[41] See table at p. 30 *infra*.

[42] Effective January 1, 1970, Richmond annexed an area of Chesterfield County containing 47,262 persons, 97% white. See *Holt* v. *City of Richmond*, 459 F.2d 1093 (4th Cir. 1972).

[43] The evidence introduced below was prepared in connection with annexation proceedings against Henrico and Chesterfield Counties in 1964 and 1969, respectively, and showed that in 1962, 66% of Henrico residents, and in 1968, 48% of Chesterfield residents were employed in Richmond (RX 56, 56A, Ex. A. 5-6). It was also shown that 90% of all attorneys listed in the 1970 "Greater Richmond Telephone Directory" had their offices within the city, and of those, 51.4% lived in Richmond, 42% in either of the two counties, and 6.6% elsewhere (A. 161); and that approximately one-third of the State Education Department employees in 1971 lived in each of the three political entities *(ibid.)*.

[44] Statistics compiled from the 1970 United States Census were not available to the parties or the district court at the time of trial (see A. 160). Throughout this Brief, we shall refer to the latest figures available from judicially noticeable sources because they update those available at the time of trial and have the added virtue that they were compiled following the 1970 annexation of a portion of Chesterfield County by the City of Richmond (note 42, *supra;* see 338 F. Supp., at 180-82, Pet. A. 406-10).

[45] According to the 1970 Census, 48% of Chesterfield workers are employed in Richmond, 30% in Chesterfield and 6% in Henrico; 65% of Henrico residents work in Richmond, 27% in Henrico and

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Similarly, pre-annexation Richmond accounted for 62% of the region's retail sales (A. 163; RX 54, 54A, Ex. A. 1-2) and later figures demonstrate its continued preponderance as the commercial and mercantile center of the area.[46]

The daily newspapers of general circulation throughout the area are in Richmond (A. 775-76),[47] as are most local television and radio stations and a disproportionate number of public and private educational and cultural facilities:

3% in Chesterfield. UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, CENSUS TRACTS, CENSUS OF POPULATION AND HOUSING, *Richmond, Va.* SMSA (G.P.O. PHC(1)-173, 1972), p. 11, Table P-2, Social Characteristics of the Population: 1970. (These figures omit workers whose place of work is unreported). Analyses performed for a Richmond Regional Transportation Study projected that the City would retain a similar proportion of metropolitan employment in the future (A. 160, 163; RX 54, 55, Ex. A. 1-4).

[46] Richmond is responsible for $698,123,000 (72%) in retail trade as compared to $89,226,000 in Chesterfield and $186,021,000 in Henrico. Richmond's preponderance is still greater in regard to "shopping goods"—those purchased from department and apparel stores and thus comprising routine consumer items. Richmond accounts for $213,671,000 of such purchases, five times the amount of Henrico's $39,253,000 and almost seventeen times Chesterfield's $12,704,000. RAND, MCNALLY & CO., [1972] COMMERCIAL ATLAS & MARKETING GUIDE 76. Compare 338 F. Supp., at 178, 182, Pet. A. 402, 411.

[47] Newspapers are a good index of the independent identity of subparts of a region, because they are relatively inexpensive to establish (less expensive, for example, than television stations—all six of which in the Richmond SMSA are located in Richmond City), and are directly responsive to the demand of the local populace for news about their neighbors, about local political issues, and about the doings in the community as that is perceived by its inhabitants. Henrico County apparently has no newspapers; Chesterfield has only one: a weekly published in Chester, which is a town of about 5,500 residents. The Richmond newspapers therefore serve the counties. There are an estimated 83,100 households in Richmond City, and 74,200 in the counties, *op. cit. supra*, at 76 n. 77; Richmond's morning *Times-Dispatch* has a daily circulation of 140,618 and a Sunday circulation of 193,540. Richmond's evening *News-Leader* a circulation of 118,410. [1972] AYER DIRECTORY OF PUBLICATIONS 1084, 1122.

for example, six of seven institutions of higher learning, including a medical college (A. 164), and the major libraries and museums of the area (A. 164; RX 59, Ex. A. 9-11). Health services for the entire area are concentrated in Richmond (which includes within its boundaries 17 of the community's 18 hospitals (A. 165)); most residents of the region are born in and die within Richmond.[48] Such public transportation as is available in each of the counties is almost exclusively directed toward travel between suburb and city rather than within each county (see A. 885-86).

While the subdivision of the region among three political units naturally creates a competitive spirit in various affairs, there has been a great deal of concerted action for mutual benefit. Henrico County offices are located in Richmond, and its employees there depend upon the City's police and fire services (A. 805-06). Parts of the county's territory have in the past received fire protection from Richmond pursuant to agreement, and there is presently a reciprocal fire assistance pact between Richmond and Chesterfield County (A. 877; 338 F. Supp., at 184, Pet. A. 415). The City has entered into 20-year sewage treatment and water supply contracts with Henrico County, which receives 90% of its water from Richmond, as well as reciprocal supply agreements for these utilities with Chesterfield County (A. 188-94; RX 48-51). Pursuant to statute, the city and counties share concurrent regulatory jurisdiction over subdivision development in an area five miles around Richmond (A. 166; PX 121, p. 232; 338 F. Supp., at 229, Pet. A. 517).

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[48] Data compiled by the Richmond Planning Department from Bureau of Vital Statistics records showed that 70% of resident Chesterfield mothers, 79% of Henrico mothers and 94% of Richmond mothers gave birth within the City, while 49% of Chesterfield residents, 55% of Henrico residents and 85% of all Richmond residents died in the City (A. 165; RX 61, 61A, Ex. A. 15-16).

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The three school systems have likewise acted together. A modern vocational-technical training facility is operated by the Richmond system, enrolling a proportionate number of students from the three subdivisions. Together, several specialized joint schools are operated: two centers for mentally retarded children (one located in Henrico and another in that area of Chesterfield County annexed to Richmond in 1970), and a mathematics-science center in Henrico (A. 417-20).

Together with Hanover County, the three jurisdictions compose the Richmond Standard Metropolitan Statistical Area as designated by the U.S. Census Bureau.[49] Every report of local or regional planning bodies and privately retained consulting firms has noted the marked interdependence of the city and counties (PX 148; RX 47, 89, Ex. A. 34, 36); the district court reviews these and much of the evidence introduced at the trial in its detailed findings (338 F. Supp., at 178-84, Pet. A. 401-16).[50]

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[49] The Bureau's criteria are set forth in UNITED STATES BUREAU OF THE BUDGET, OFFICE OF STATISTICAL STANDARDS, STANDARD METROPOLITAN STATISTICAL AREAS (1967). Generally, an SMSA is defined to include counties containing at least one city of 50,000 or more inhabitants, together with those adjacent counties that are metropolitan in character and are integrated economically and socially with the county of the central city. Although Hanover County, which contains only 7% of the SMSA's population, was added to the Richmond SMSA by the Census Bureau in 1963, consultants' reports have noted the considerably lesser degree of interdependence between Hanover and Richmond (HX 25, Ex. A. 41). The Hanover schools enroll only 9,600 students, 78% white, and were desegregated in 1969.

[50] See the comment of the Henrico County Circuit Court in a 1964 decision in a Richmond annexation suit (HX 7, Ex. A. 53):

> Although community of interests is not necessarily as vital a consideration as other factors to be considered . . . this Court nevertheless feels that this factor should be given consideration. . . . Dependence of the central city of Richmond and the immediately surrounding county is mutual. [record citations omitted] The evidence shows that the commercial and civic interests of the city and county are largely identical.

2. Demographic Trends

A dominant characteristic of the metropolitan area is the increasing concentration of blacks in the Richmond central city, and whites in the suburban counties. (See RX 57, 57A, Ex. A. 7, 8; RX 71 [total population]; RX 62, 75-78, Ex. A. 21-26 [school population]; PX 17, Plate 25). Census reports for the past twenty years are revealing:

TABLE 3

POPULATION WITHIN THE RICHMOND SMSA[51]

	1950 population	1950 % nonwhite	1960 population	1960 % nonwhite	1970 population	1970 % nonwhite
Richmond	230,310	31.7	219,958	42.0	249,430[52]	42.4[52]
Chesterfield	40,400	20.9	71,197	13.3	77,046[52]	11.5[52]
Henrico	57,340	9.9	117,339	5.2	154,364	6.8

This realignment of the region's racial demography coincides with the suburbanization of Richmond—a dramatic shift in population growth patterns.[53] Prior to 1940 most of the population increase in the region occurred in Richmond (A. 156), but since that time more than 90% of the growth has taken place in Henrico and Chesterfield counties. Henrico made its greatest gains from 1950 to

[51] Sources: UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, II CENSUS OF POPULATION: 1950 (G.P.O. 1952), 46-29, 46-30; UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, I CENSUS OF POPULATION: 1960 (G.P.O. 1961), 48-28; UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, CENSUS OF POPULATION: 1970 (G.P.O. PC(1)-B48, Oct. 1971), 48-42 (correction page), 48-44.

[52] The Richmond and Chesterfield figures for 1970 are affected by the 1970 annexation described in note 42, *supra*. Without that annexation, the differential population growth and racial change trends shown by the table would be even more marked.

[53] The Executive Director of the Richmond Regional Planning District Commission testified, in fact, that for a century prior to 1950, Richmond's nonwhite population had been declining (21 R. 10-11).

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1960, and Chesterfield in the 1960-70 decade (*compare* PX 17, Plates 8, 10, 11; CX 21; HX 24 [lots and subdivisions developed]), while Richmond lost population.

The overall racial composition of the area has remained remarkably stable throughout its recent development: in 1940 blacks accounted for 28% of the population; in 1970, 26% (RX 71). But the distribution of whites and blacks throughout the area has shifted markedly, as noted above. Despite the annexation of a predominantly white portion of Chesterfield County in 1970,[54] Richmond showed an increased proportion of blacks in its total population and reached a new high of 42.4%; while black population in Chesterfield and Henrico fell off to 11.5% and 6.8% black, respectively.[55] Richmond accounted for only 25% of the white population gain in the SMSA during the 1960-70 decade, whereas Henrico and Chesterfield Counties received 60%[56] of that increase. On the other hand, Richmond received 75% of the increase in black population within the SMSA during the decade.

The population changes are, of course, reflected in the changing enrollments of the region's schools. Enrollment in the Richmond system grew from 38,857 in 1954-55 to 47,604 in 1970-71 (including the pupils gained by the 1970 annexation from Chesterfield County), while Henrico went from 13,142 to 34,470, and Chesterfield went from 9,132 to

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[54] The annexation added some 47,000 residents to the city; without it, instead of gaining nearly 30,000 people from 1960 to 1970, Richmond would have lost over 17,000. See UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, CENSUS OF POPULATION: 1970 (G.P.O. PCH(2)-48, 1971), at p. 5.

[55] In the preceding decade (1950-60), Richmond lost total population but changed from 32% black to 42% black. Henrico more than doubled in size but dropped from 10% to 5% black, and Chesterfield grew by 75% but dropped from 21% black to 13% black. See Table 3 *supra*.

[56] Richmond contains 48% of the total population in the SMSA.

24,063 (the latter figure reflecting, once again, the pupils lost by the 1970 annexation). Although at the time of *Brown*, Richmond's student population was 43.5% black and the counties' 20.4% and 10.4% black, respectively, by 1971-72 each county enrolled less than 10% black students and the Richmond system had become over 69% black (RX 75-78, Ex. A. 21-26).

Both total population distribution and school system enrollments from 1950 to 1970 reflected increasing racial concentration and segregation, according to Dr. Karl Taeuber, an expert witness and noted demographer (PX 131, A. 628-32). These trends have been apparent to local agencies and consultants for some time. A 1964 report of the Richmond Regional Planning Commission predicted an increasing black population in the City and noted that the increasing non-white school population was a factor contributing to the decline in white city residents (24 R. 81, 84-85). An earlier consultant's study (RX 89, Ex. A. 34) stressed that white migration from the city was resulting in the rapid changeover to a majority-black school system. And in 1967, private consultants retained by the Boards of Supervisors of Henrico and Chesterfield Counties made these observations (HX 25, Ex. A. 41):

> . . . there is every reason to believe that life in the Richmond metropolitan area is becoming *more* segregated with time, rather than less segregated. By that we mean non-white populations are continuing to be concentrated in the City of Richmond, and the small non-white percentages in Henrico and Chesterfield counties are likely to become even smaller with time as the white population in these counties continues to expand. At the present time there is little reason to believe that the State of Virginia or the U.S. Government is likely to adopt legislation, such as a "fair housing act," which would significantly alter this pat-

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tern of concentrating Negro housing in central cities and white housing in suburbs.[57]

It is not surprising, therefore, to find that racially discriminatory housing practices pervade the area (338 F. Supp., at 84, Pet. A. 195-96; 462 F.2d, at 1065-66, Pet. A. 572-74).[58] In its earlier ruling involving the City of Rich-

[57] It is obvious from the statistics that the 1968 Fair Housing Act, passed by the Congress, has not "significantly alter[ed] the pattern." Martin Sloane, an expert on race and housing (A. 727-35) testified that such measures would take generations to reverse the effects of past discrimination (A. 753).

[58] The Court of Appeals misconceived the significance of the evidence relating to housing segregation in several respects. For one thing, while it accepted the lower court's findings that past state and federal governmental action had limited the areas in which blacks could buy housing (462 F.2d, at 1065, Pet. A. 572), it failed to consider whether school district lines which incorporated that segregation into the school system were not therefore impermissible obstructions of the affirmative duty to desegregate identifiably black schools. *Compare Brewer* v. *School Bd. of Norfolk*, 397 F.2d 37, 41 (4th Cir. 1968) (attendance zones incorporating housing discrimination) *with* 462 F.2d at 1066, Pet. A. 574 (housing discrimination apparently irrelevant in the present case).

Second, the Court of Appeals appears to have dismissed the significance of discrimination against blacks in the field of housing because it existed in Richmond as well as the two counties (462 F.2d at 1066, Pet. A. 574). There are still areas of Richmond to which blacks cannot move (21 R. 32). But the suburban county areas in which population growth has taken place in the last twenty years have been all but totally closed to blacks while the established ghetto areas in the city have expanded, in typical fashion, on their periphery (A. 666).

Finally, the Court of Appeals thought housing segregation irrelevant because *it* could not perceive that blacks had been attracted to Richmond from the counties or that all the whites who left Richmond settled in the counties (462 F.2d at 1066, Pet. A. 574). Not only is the Court's examination of school attendance changes for a single year (*ibid.*) an exceedingly imperfect indicator of population trends, but racial disproportions also result from the tendency of new arrivals to an area to settle in accordance with perceived customs in the community, i.e., to conform to established or developing patterns of racial segregation (A. 666). *Compare* HX 25, Ex. A. 41.

mond alone (317 F. Supp., at 561-63, Pet. A. 8-12), the district court found extensive discrimination, both public and private, affecting the availability of housing to black families, including widespread use of racial covenants, deliberate location of segregated housing projects in segregated areas, encouragement of racial discrimination by brokers and sellers through policies of federal (FHA, VA, etc.) and private lending or mortgage insuring institutions, and long-continued newspaper advertisement identification (direct or indirect) of properties as intended for purchase by buyers of a particular race. The evidence received in the present proceedings establishes that these and other discriminatory practices exist throughout the metropolitan area (338 F. Supp., at 212-29, Pet. A. 478-519).

Only a brief canvass is feasible here: The Acting Deputy Staff Director of the United States Civil Rights Commission described in detail how early FHA approval of racially restrictive covenants established racial segregation as the normal practice of the building industry (A. 737-39; see PX 127-30A, 137), whose effects continue even today. Prior to 1950, most subdivisions developed in either Richmond or the counties contained the covenants (A. 80-86, 1335), and a significant number platted thereafter also employed the covenants (PX 127; CX 37, 38). An FHA official reported that covenants were used on many county subdivisions constructed with FHA assistance (A. 595-98). The location of black housing projects in segregated areas of Richmond (PX 39, 121, p. 242, 130) was confirmed by the Director of the Housing and Redevelopment Authority, who said that his inability to locate public housing outside the City[59] reinforced the overall segregated residential patterns (A. 617). There were continued racially separate property listings in the newspapers of general circulation

[59] *Compare* A. 468-80.

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throughout the area until 1968 (A. 769-70, 777; PX 42), and the area's leading title company continued until 1969 to include restrictive covenants in its title reports (20 R. 4-17; PX 90). Incidents suggesting discriminatory treatment of black prospective buyers of county properties were unrebutted and unchallenged on cross-examination (A. 461-67; 21 R. 42-49; see also, PX 92; 19 R. 214-18), and the existence of a pattern of discriminatory practices was confirmed by both reports of an official agency (PX 148, p. 34) and the testimony of its Executive Director (A. 497-98, 500-01). To the extent that the segregated patterns might be viewed as the result of economic, not racial factors (*but see* A. 632, 636-38), evidence demonstrating the substantially lower socioeconomic status of blacks in Virginia after decades of inferior, segregated education was introduced (PX 125).

II. The Proceedings Below

A. *Litigation from 1961 to 1970*

The present case began in 1961 as a class action to desegregate the Richmond schools (A. 1). The School Board of the City of Richmond and the Pupil Placement Board of the Commonwealth of Virginia were initially made defendants (A. 59-69). The district court ordered that individual named plaintiffs be admitted to the white schools to which they desired to transfer but denied an injunction in favor of the class. The Court of Appeals reversed in part, directing limited class relief. 317 F.2d 429 (4th Cir. 1963).

After further proceedings in the district court, the Court of Appeals rejected plaintiffs' challenge to free-transfer desegregation plans and held also that faculty desegregation would not be required. 345 F.2d 310 (4th Cir. 1965).

This Court granted certiorari on the latter holding only, reversed, and directed that faculty desegregation be commenced. 382 U.S. 103 (1965).[40]

On remand from this Court, a consent decree was entered which embodied a freedom-of-choice plan, provided for faculty desegregation, and obligated school authorities to replace free choice if it failed to produce results. However, despite continuation of the patterns of segregation (see 338 F. Supp., at 71-72, Pet. A. 167-69), Richmond school officials took no action. March 10, 1970, the plaintiffs filed a motion for further relief, relying upon *Green* v. *County School Board*, 391 U.S. 430 (1968) (A. 8).

B. *Proceedings on the Motions for Further Relief and to Add Parties*

The motion for further relief elicited an admission by the Richmond School Board that its free-choice plan did not meet then current constitutional standards (338 F. Supp., at 70-71, Pet. A. 165). The district court directed submission of new plans for desegregation of the Richmond schools. Initially the Richmond School Board submitted a plan, prepared with the assistance of HEW, based upon neighborhood zoning without pupil transportation (338 F. Supp., at 71, 74-76, Pet. A. 166-67, 173-77). The plaintiffs, through an educational expert, submitted an alternative plan using all of the techniques subsequently validated by this Court in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), as applied to the schools within the City of Richmond (317 F. Supp., at 568-72, Pet. A. 24-32). June 26, 1970, at the conclusion of an evidentiary hearing, the district court rejected the HEW

[40] In its 1965 opinion, this Court noted the passage of a decade since *Brown* and announced that delays in desegregation could no longer be tolerated. 385 U.S., at 105.

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plan and afforded the Richmond School Board an additional opportunity to submit its own alternative plan (338 F. Supp., at 78, Pet. A. 182). The board thereafter proposed a plan which adopted pupil transportation at the secondary levels but avoided it at the elementary levels, and which did not achieve as much desegregation as the plaintiffs' plan.

Following a hearing in August, 1970, the district court permitted the school board to implement its second plan on an interim basis for the 1970-71 school year, for the explicit reason that sufficient time was no longer available within which to acquire the transportation capacity necessary to implement a plan like that submitted by the plaintiffs, which the district court expressly approved as "reasonable" within the meaning of the then applicable law [*Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 431 F.2d 138 (4th Cir. 1970)] [*rev'd* 402 U.S. 1 (1971).] (317 F. Supp., at 572, Pet. A. 32). The district court's opinion and order instructed the Richmond School Board that a plan which achieved as much or more desegregation than that submitted by the plaintiffs would have to be implemented not later than the 1971-72 school year, and again afforded the board an opportunity to submit such a plan drawn by its officials.

> . . . The Richmond public schools cannot be desegregated without using the techniques used by Dr. Foster such as non-contiguous zoning, pairing, clustering of schools and transportation, . . . (317 F. Supp., at 575, Pet. A. 40).

The school board was directed to notify the district court within 90 days of the steps it had taken to implement a constitutional plan and of the earliest date such a plan could be put into operation in the Richmond public schools (317 F. Supp., at 578-79, Pet. A. 47).

On November 4, 1970, the School Board of the City of Richmond filed a motion to join the School Boards and Boards of Supervisors of Henrico and Chesterfield Counties, their school superintendents, the State Board of Education, and the State Superintendent of Public Instruction as additional parties, on the ground that full and effective relief could not be granted to the plaintiffs[61] without the joinder of these parties (Fed. Rule Civ. Pro. 19).[62] The

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[61] During the previous summer's hearings, Dr. Thomas Little, Associate Superintendent of the Richmond system, had been asked on cross examination whether Richmond schools could be desegregated without using pupil transportation. After his negative response, the following exchange took place:

> Q. Dr. Little, assuming transportation of pupils, is there any way to achieve what you consider to be, as an educator, an optimum of desegregation in the Richmond area? A. In the Richmond area, yes.
>
> Q. How would you do that? A. It would involve the involvement of a larger area than the present city boundaries of the City of Richmond.
>
> Q. Are you talking about Henrico County, Chesterfield County, or both? A. Henrico County, Chesterfield County, and the possibility of the general metropolitan area, maybe bordering on, in other counties other than Henrico and Chesterfield. Basically, the problem could be solved within the City of Richmond, Henrico and Chesterfield Counties. [6/25/70 Tr. 1122-23].

[62] On November 15, 1970, counsel for the Richmond Board informed the district court by letter that new plans would not be filed until January, 1971. On December 9, 1970, plaintiffs accordingly filed a motion which sought implementation of their alternative plan effective with the second semester of the 1970-71 school year, which they contended was required under *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969) and *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970). The district court also had before it a motion of the School Board seeking to vacate a *pendente lite* construction injunction, see, *e.g.*, *Calhoun* v. *Cook*, 430 F.2d 1174 (5th Cir. 1970), which it had issued following the first hearings on the motion for further relief. In an opinion entered January 29, 1971 and reported at 324 F. Supp. 456, the court denied the motion to implement

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district court invited counsel for the parties sought to be joined by the motion to appear and present argument concerning the sufficiency and propriety of the motion (36 R.) After the submission of memoranda, the district judge

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plaintiffs' plan and vacated its injunction as to those proposed construction projects to which plaintiffs had no objection.

On January 15, 1971, the School Board of Richmond filed three alternative desegregation plans limited to the Richmond schools. Following an evidentiary hearing on March 4, 1971 (to which counsel for the added defendants were invited to express any views concerning the appropriate relief required within the City of Richmond should the claim against them be held insufficient [see 34 R., 2/16/71 Tr. 5-6]), the district court approved one of the plans proposed by the school board and directed its implementation commencing with the 1971-72 school year. In doing so, the court expressly qualified its conclusion that the school board's plan met the requirements of the law by the reservation that all questions of additional relief against the joined parties remained to be litigated:

> The record will disclose that there is now pending before the Court in this school desegregation case a yet to be determined issue concerning the duty or duties, if any, imposed by law upon certain defendants joined by leave of Court granted Dec. 5, 1970. The conclusions contained in this memorandum are accordingly predicated solely on the state of the record insofar as same applies to the present duty of those defendants who were parties to the suit prior to the joinder motion; without consideration of the issues involving the joined defendants. Trial of those issues, depending on the evidence and the law, may or may not disclose further obligations on all parties.

325 F. Supp., at 830 n. 1, Pet. A. 110. In its opinion of April 5, 1971, the court approved the Richmond School Board's plan for 1971-72 because:

> . . . the School Board, if this proposal succeeds as planned, will have eliminated the racial identifiability of each facility *to the extent feasible within the City of Richmond.* This is the extent, under current law, of the affirmative obligation governing use of *its* available powers. . . . (325 F. Supp., at 835, Pet. A. 121 [emphasis supplied].)

The court noted in a footnote that: "This conclusion is based upon what can be reasonably expected within the geographical boundaries from which the students for whom the School Board now has responsibility come."

found, without intimating any view on the merits of whatever underlying claims might be made, that it was appropriate to grant the motion in order to litigate the duty, if any, owed by the additional defendants to the plaintiffs or the Richmond School Board. The court noted that its finding with respect to a desegregation plan for the City of Richmond was

> . . . made in the context of litigation between Richmond residents and Richmond officials alone. It is by no means inconsistent with the existence of a duty on the part of officials with broader powers to exercise such powers to afford different or additional relief from what the Court has found to be state-imposed segregation. The addition of further parties, moreover, alters the range of alternatives, some of which may be shown as feasible and more promising in their effectiveness. Green v. County School Bd. of New Kent County. [citations omitted]. It is with an eye to this range of choices between means to provide desegregated schools that the legal sufficiency of a proposed unitary plan is to be tested.

(51 F.R.D., at 141, Pet. A. 50-51).

At the same time, the district court set forth its view of the issues which would be presented by claims against the additional defendants, in terms to which the court consistently adhered during subsequent proceedings:

> Certain of the additional parties have a direct affirmative obligation toward the Bradley plaintiffs, and others of them might well be necessary in order that the first can fulfill that obligation; the question remains whether in fact that obligation has been fulfilled. On that point the position of the instant plaintiffs is not clear. They demand a unitary school system.

> However, whether it is their contention that this may or must be achieved by the formation of a consolidated school division or by other means beyond the power of the present defendants does not appear with clarity from the pleadings. The measure of the effort which may be required of those sought to be joined may depend upon both the extent to which the actions, if any, of these persons or their predecessors have contributed to the existing situation, and also the reasonableness of the remedial steps which are available.

(*Id.* at 143, Pet. A. 54-55). Accordingly, and since counsel had expressed their intention to do so at the hearing (36 R. 8), plaintiffs were directed to file an amended complaint "wherein they set forth both those alleged facts which they contend give rise to an obligation on the part of those joined to take steps to achieve a unitary school system for the class they represent, and also the particular relief demanded." (*Id.* at 143-44, Pet. A. 55).

Plaintiffs' amended complaint (A. 99-109), filed December 14, 1970, alleged constitutional violations on the part of all added defendants and concluded with a prayer seeking the assignment of students across the school division lines between Richmond, Henrico and Chesterfield to achieve desegregation, either by "the consolidation or merger of the defendant school systems in all aspects of school operation and administration . . ." or by "such agreements, contracts, or otherwise [as would] provide for the joint operation of the educational systems of the City of Richmond and the Counties of Henrico and Chesterfield, with free availability of all facilities for pupil attendance and tri-system-wide assignment of pupils, teachers, school plant, transportation facilities and all other incidents of school operation, to the end that no school within

the respective defendant school systems shall be racially identifiable" (A. 107-08).[63] (See also, A. 1336-43.)

Following disposition of a series of pre-trial motions by the State and County defendants,[64] and pretrial conferences during the Spring of 1971, evidence was received August 16-20, 23-27, 31 and September 1-2, 7-10, and 13, 1971.

C. *The Findings and Order of the District Court*

On January 5, 1972, the district court issued its Memorandum, containing a short history of the case (338 F. Supp., at 70-79, Pet. A. 164-85); general factual findings and conclusions, together with a discussion of applicable legal principles (338 F. Supp., at 79-116, Pet. A. 185-263); and extensive, detailed, specific findings of fact supportive

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[63] The Amended Complaint also requested that defendants be required

> to prepare and submit for approval of the Court a plan for the operation of all of the public schools within the defendant school systems in conformity with the requirements of the Fourteenth Amendment, including but not limited to, the establishment of schools, pupil populations, staffs, faculties, transportation routes and extracurricular activities which are not racially identifiable and to be effective with the commencement of the 1971-1972 school year.

(A. 108).

[64] On January 8, 1971, the district court denied a motion to recuse which had been made by several of the added defendants (324 F. Supp., at 439, Pet. A. 58-90). On February 10, 1971, the court denied a motion to dismiss as to certain of the added defendants in their individual capacities (324 F. Supp., at 401, Pet. A. 107-09) and on the same date denied the motion of several of the joined parties to convene a three-judge court pursuant to 28 U.S.C. §2281 to hear and determine the cause (324 F. Supp., at 396, Pet. A. 98-106). Additional pre-trial motions were disposed of in two unreported orders (Pet. A. 91-97). A renewed motion to convene a three-judge court, made following a 1971 amendment of Virginia's Education Code (see Appendix E *infra*), was also denied (Pet. A. 156).

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of the general findings and conclusions (338 F. Supp., at 116-230, Pet. A. 185-545).

The district court found that, notwithstanding the implementation of a court-ordered plan in Richmond and the taking of various steps toward desegregation in the counties, the schools remained racially identifiable. They were, in other words, "black" schools and "white" schools, whether viewed in terms of the common sense perceptions of students and parents based upon marked deviations from the community-wide ratio, or of the informed judgment of professional educators, or of the history of discrimination and segregation in Virginia. (338 F. Supp., at 80-81, Pet. A. 186-90.) The court concluded that unconstitutional dual school systems in the Richmond area had not been eliminated:

> A brief examination of the current data and that of recent years showing pupil assignment patterns in schools of the three political subdivisions of Richmond, Henrico and Chesterfield, shows both great disparities in 1971 racial composition, making both individual facilities and entire systems racially identifiable and also a very recent history of the maintenance of a great number of one-race schools. Some such still exist. The recent statistical history of these school divisions is set forth in accompanying tables. Appendix "A". [338 F. Supp., at 80, Pet. A. 186]
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> . . .
>
> The institution within the three existing school districts of something which might in some other context pass for desegregation of schools is a phenomenon dating at best from the opening of the 1971-72 school year, which took place during the trial of this case. Prior thereto each system was in some respect nonunitary, and the Court is not fully advised as to the

> current status of the county system[s]. Even were each existing system, considered in a vacuum, as it were, to be legally now unitary within itself, the question still remains whether a state policy having the effect of preventing further desegregation and foreseeably frustrating that which has been accomplished to date may be imposed upon a very recently achieved desegregated situation. Momentary unitary status—assuming it existed here, which has not been shown—will not insulate a school division from judicial supervision to prevent the frustration of the accomplishment. (338 F. Supp., at 104, Pet. A. 238.)

The persisting dual school systems, the court found, could no longer be remedied by piecemeal desegregation plans limited to the individual divisions of the metropolitan area (338 F. Supp., at 90-91, 103-04, Pet. A. 207-11, 236-39):

> The maintenance of segregation in an expanding community therefore creates problems, when a remedy must eventually be found, of a greater magnitude in the present than existed at an earlier date. . . . (338 F. Supp., at 91, Pet. A. 210.)

Believing that practical needs compelled consideration of the three school divisions together in developing an effective plan of desegregation, the district court inquired whether any legitimate State interest in maintaining the existing school division boundary lines would prevent the combination of city and county schools in a desegregation plan that could achieve the greatest possible degree of actual desegregation and thereby eliminate racially identifiable schools or systems (338 F. Supp., at 81-83, Pet. A. 190-93).

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The court answered this question in the negative, in light of:

(1) the history of willingness by Virginia school authorities to cross school division lines freely in order to promote and serve segregation (338 F. Supp., at 83-84, Pet. A. 193-95; see pp. 34-37, *supra*);

(2) the coincidence of the Richmond City boundary lines with highly segregated residential patterns which were shown to have resulted in part from racially discriminatory practices by private individuals and public agencies, including the school construction practices of the separate systems (338 F. Supp., at 84-89, 91-92, Pet. A. 195-207, 211; see pp. 16-17, 33-35, *supra*);

(3) the lack of coincidence of the boundary lines with any "tangible obstacles" and their lack of relation "to any administrative or educational needs" (338 F. Supp., at 83, Pet. A. 192-93);

(4) the shared control of public education—utilized in the past to avoid and resist desegregation—between local and State authorities (338 F. Supp., at 92-96, 98-103, Pet. A. 212-21, 227-36; see Appendices C, E *infra*).

The district court therefore found it appropriate to require state and local authorities to act in concert to facilitate the execution of a desegregation plan that would cross existing school division lines in order to provide effective constitutional desegregation[65] of the Richmond area schools (338 F. Supp., at 96-98, 104-13, Pet. A. 222-26, 239-59):

The Court concludes, in the context here presented, that the duty to take whatever steps are necessary to

[65] See Appendix A *infra*.

> achieve the greatest possible degree of desegregation in formerly dual systems by the elimination of racially identifiable schools is not circumscribed by school division boundaries created and maintained by the cooperative efforts of local and central State officials. (338 F. Supp., at 79-80, Pet. A. 185-86.)

A proposed metropolitan plan of desegregation (RX 64-66, A. 195-243, Ex. A. 29-31) had been presented at the extensive hearings following joinder of the county and state defendants. The plan was developed by administrators in the Richmond system,[66] and favorable opinions as to its operability were expressed by distinguished educational witnesses (*E.g.*, A. 378, 433, 563). The district judge concluded that the plan was basically workable and that —barring development of a better scheme, which he stood ready to consider—it should be implemented:

> . . . It is to be recognized that Dr. Little in preparing the suggested plan, which the Court finds reasonable, has done so without the benefit of any cooperation from the respective county school officials. Their cooperation and expertise will undoubtedly make the task easier. (338 F. Supp., at 190, Pet. A. 428.)
>
> . . .
>
> The metropolitan plan as now formulated is based on attendance figures from September of 1970. It demonstrates, however, the feasibility of the tech-

[66] During pre-trial conferences, the Richmond Board announced that it would present such a plan at the hearings. The district court urged the parties, and in particular the added state and county defendants, to examine the proposed plan—which the court instructed the Richmond Board to tender prior to the hearing (A. 138)—in order that they might suggest any preferable alternatives and avoid delay in implementation should metropolitan relief be found required (A. 136-40). However, none of the other parties made any alternative suggestions to the district court during the trial. See Appendix B *infra*.

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niques employed. Furthermore, its current form can be brought up to date rapidly to conform to current attendance statistics and capacity figures with a few hours' work with the computer. . . . Any one of the school administrations involved herein could design a desegregation plan to achieve roughly equal racial proportions in schools throughout the Richmond metropolitan area. Neither of the defendant counties has undertaken to develop any proposed desegregation plan in cooperation with the city. It is apparent that the combined efforts of the city, the counties and the state authorities can lead to an even better plan than the one now before the Court—nevertheless the plan now proposed will be acceptable and the Court will be readily available to consider suggested modifications. [338 F. Supp., at 191, Pet. A. 431-32]

The salient features of the Richmond Board's plan are set out in the margin.[67] Because the plan attempted to

[67] The plan redivides the area consisting of the city and the two counties into six subdivisions for purposes of administration. Each subdivision, with the exception of the sixth, would contain a proportion of black and white students roughly equivalent to the system-wide ratio (A. 203-05, 208-12; 338 F. Supp., at 186, Pet. A. 419). Pupils would be assigned to schools within each subdivision or immediately contiguous thereto (A. 206-07; 338 F. Supp., at 186, Pet. A. 419). Generally speaking, students would be exchanged or reassigned on a school-by-school basis, without pairing or grade restructuring (A. 199-201; 338 F. Supp., at 186, Pet. A. 419). The selection of schools between which students would be exchanged was made by computer pursuant to instructions to equalize, for all students insofar as possible, the length of transportation routes (A. 213-18; 338 F. Supp., at 187, Pet. A. 421). The projected assignments would result in pupil populations at each school (except those in Subdivision Six, in the southern part of Chesterfield County) between 20% and 40% black (RX 63; A. 201-06, 214; 338 F. Supp., at 186-87, Pet. A. 419-22). The Board's plan for Subdivision Six, the most sparsely settled (A. 217-18), would eliminate all-white and all-black schools through pairing or

provide for the administration of the desegregated schools in accordance with existing Virginia law insofar as possible,[68] and because its designers were of the view that administrative problems would thereby be eased (A. 240), the plan called for consolidation of the school divisions under the supervision of the State Department of Education. Accordingly, the district court's order (338 F. Supp., at 244-48, Pet. A. 536-45) specified in detail the elements of planning and adjustment that were required to be completed in order to prepare for implementation

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zoning (A. 205-06, 1320-21; 338 F. Supp., at 187, 189, Pet. A. 422-26).

The Richmond Board's plan provided for the selection of students to be exchanged between schools or subdivisions by use of a birthday lottery (A. 223-25; 338 F. Supp., at 187, Pet. A. 422) although it was also suggested that where such a mechanism would result in transportation of undesirable length, noncontiguous zoning could be employed (A. 1322-23; 17 R. 135-45; 338 F. Supp., at 187, Pet. A. 421-23). After county school officials testified that experimental simulated birthday lotteries in the least populated areas of each county (including Subdivision Six in Chesterfield County) resulted in bus routes of inordinate length, the Richmond Associate Superintendent of Schools presented to the court detailed satellite (noncontiguous) zoning proposals and transportation routings for these areas which minimized the transportation time required (RX 96, 96A; CX 30; HX 33; A. 1001-05, 1322-23), including adoption of a noncontiguous zone utilized by Henrico County in 1970-71 (A. 1322-23). See 338 F. Supp., at 190, Pet. A. 427-28).

The maximum number of students who would need to be transported under the proposed plan was 78,000—10,000 more than were transported in the three school divisions (A. 232-34); 338 F. Supp., at 188, Pet. A. 423). (This figure includes both students who would be transported for purposes of integration and those entitled to transportation to the school serving their geographic zone of residence, apart from the desegregation plan (A. 232; 338 F. Supp., at 188, Pet. A. 423)). The district court found that the projected times of transportation for pupils would not exceed those which both counties have required in the past (338 F. Supp., at 188, Pet. A. 424; see A. 988; RX 91; HX 32; 20 R. 79, 137-38; 29 R. 205).

[68] See Appendix D *infra*.

of desegregation throughout the greater Richmond area by consolidating the Richmond, Chesterfield and Henrico school divisions. In its order, however, the district court once again reiterated its willingness to consider other plans to eliminate racially identifiable schools in the region, asking for the submission

> . . . to this Court within seventy (70) days from the date of this Order [of] the modifications required by paragraph g(1) above as well as any other modifications, changes or recommendations, as may be desired by the State Board of Education, the State Superintendent of Public Instruction, the acting school superintendent or the school board created pursuant to paragraph b above. (338 F. Supp., at 246, Pet. A. 541.)

The court had earlier made clear at the conclusion of its comprehensive opinion that:

> While the viable racial mix contemplated by the plan is educationally sound and would indeed result in a unitary system, variations from that suggested viable mix may be unavoidable. All parties are admonished that it is not the intention of the Court to require a particular degree of racial balance or mixing. If in the implementaion of the plan improved modifications seem appropriate, the Court stands ready to entertain them. (338 F. Supp., at 230, Pet. A. 519-20.)

D. *The Court of Appeals' Decision*

On June 5, 1972, following an expedited appeal,[69] the Fourth Circuit reversed (Judge Winter dissenting). The majority opinion (462 F.2d, at 1060-70, Pet. A. 562-83) saw the case as one in which a federal district court had undertaken to "compel one of the States of the Union to restructure its internal government" (462 F.2d, at 1060, Pet. A. 562) "for the purpose of achieving racial balance" (*ibid.*). In arriving at this view, the majority appears to have extrapolated from the District Court's approval of the Richmond Board's plan what it took to be the set of principles that had guided the District Court in its resolution of the legal issues in the case.

Thus, the Court of Appeals proceeded from the recitation that

> . . . the district judge sets out in some detail [notably *only* in his comprehensive detailed findings of fact, which cover virtually all of the evidence in a voluminous record] *the theory advanced by various witnesses* of a "viable racial mix." . . . (462 F.2d, at 1062, Pet. A. 567 [emphasis supplied])[70]

to the very different ascription that

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[69] On January 19, 1972, the District Court denied a stay of its order pending appeal, noting that the order by its terms would not have resulted in the transfer of any students for six months, during which period essentially planning functions would have been carried out (Pet. A. 549-50). February 8, 1972, the Court of Appeals stayed all provisions of the order except those explicitly regarding continued planning, although it left to the State Board's discretion whether a provisional school board for a merged division should be formed; it also expedited the appeals (Pet. A. 553-56).

[70] Dr. Little, Associate Superintendent of the Richmond schools who drafted the Richmond Board plan, did indeed testify that achieving a "viable racial mix" which would promote stable desegregation was one of *his* goals (A. 214).

> In *his* concern to achieve a "viable racial mix," the district court [ordered a tri-division desegregation plan]. (462 F.2d, at 1063, Pet. A. 567 [emphasis supplied]).

Similarly, although the Richmond Board's plan had proposed consolidation of school divisions as the mechanism for an interdivision desegregation plan because, in Dr. Little's judgment, the administration of the desegregated schools would thereby be simplified and education improved for all students (A. 240), the Court of Appeals treated this particular form of plan as an essential element of the case and reversed outright without directing examination of other inter-division alternatives.

The majority thought that the case involved—and involved only—a question of the constitutionality of the existence of adjoining political subdivisions with differing racial demographies. It found that maintaining boundary lines between such subdivisions involved "no constitutional violation" (462 F.2d, at 1070, Pet. A. 583); and it added that the Tenth Amendment barred a contrary holding "absent invidious discrimination in the establishment or maintenance of local governmental units." (462 F.2d, at 1060, Pet. A. 562). It accordingly held that inter-division desegregation was legally impermissible, with the result that we have previously described at pp. 10-11 *supra*.[71]

Summary of Argument

I. Like *Swann*, this case concerns a long-persisting dual school system. It does not present the question whether the mere maintenance of school division lines separating

[71] For a more thorough treatment of the Court of Appeals' opinion, see pp. 46-54, 64-65, and 74-83 of the Petition for Writ of Certiorari herein; pp. 57-62, 70-82 *infra*.

adjacent divisions of differing racial concentration violates the Constitution. Violations are established upon other grounds. This case involves the scope of remedies for them.

It does not involve any question of "racial balance." Nor does it involve any claim that Virginia's maintenance of school division lines between Richmond and the counties is *per se* unconstitutional. The Fourth Circuit wrongly treats the problem of division lines in isolation from the over-all problems of desegregating the Richmond area schools. The District Court did not cross the lines on the theory that they were unconstitutional but upon the finding that, unless they were crossed, desegregation would remain incomplete because Richmond area schools would remain racially identifiable.

Finally, the case does not involve any question regarding the particular form of inter-division relief given here: namely, consolidation. That form of relief was ordered by the District Court because no alternative proposal for inter-division desegregation was advanced by the defendant school authorities.

II. The practical situation confronting the District Court after ten years of efforts to desegregate the Richmond schools made effective desegregation impossible within the confines of the Richmond City school division boundary lines, and therefore required that the lines be crossed. That being so, it is no objection to crossing the lines (as the Fourth Circuit believed) either (1) that the lines are not *per se* unconstitutional, or (2) that a State might not be taxed with violating *Brown* merely because of differing racial ratios in the school populations of adjacent school divisions. Like other structural arrangements of a State's public schools, division lines are sub-

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ject to alteration where necessary to devise an effective remedy for indurate and intractable *de jure* segregation. The State of Virginia, not its several political and educational subdivisions, is responsible under the Constitution for the segregation of the public schools within each subdivision; and the State may not oppose state-created boundaries of local administrative jurisdiction to the effective redress of racial segregation for which it bears the constitutional responsibility.

III. This does not imply, of course, that federal district courts are free entirely to ignore school division lines in the fashioning of desegregation decrees. The practical problems entailed by inter-division plans are among the "practicalities" that the district judges are obliged to consider. In addition, a State's decisions regarding the manner in which its public school system should be subdivided, while not entitled to an invariable, inflexible preference over other concerns relevant to the formulation of an effective school desegregation plan, are entitled to substantial weight. In the present case, however, a combination of factors deprives the boundary lines between Richmond and the counties of much of the weight that they might otherwise possess, and overwhelmingly supports the District Court's conclusion to cross those lines. Principally:

(A) Virginia law, Virginia public officials, and Virginia school authorities have historically crossed or ignored school division lines in the service of numerous interests, including the interest of segregation. A concern for local autonomy that has been so often subordinated to other interests by Virginia law and practice ought not suddenly to be honored as a categorical imperative when it conflicts with the interest of effective school desegregation.

(B) The District Court properly found that the Richmond, Chesterfield and Henrico school divisions constitute a single educational community within which the purposes and promises of *Brown* require an elimination of racially identifiable schools. Fundamentally, *Brown* is concerned with the unmistakable stigma of second-class citizenship that "separate but equal" schools attach to black Americans, and with the destructive impact of that stigma upon the education of black children. Implementation of *Brown* requires the eradication of all arrangements of the public educational institutions of a State which perpetuate the stigma or reinforce its effects. In the context of the history and the current circumstances of the Richmond area schools, a desegregation plan which leaves racially identifiable black Richmond City schools sequestered by division boundary lines from closely adjoining one-race white county schools would also leave the vital aims of *Brown* completely thwarted.

In that context, the Fourth Circuit's judgment perpetuates the same old system of "white" schools and "black" schools that the Richmond area has always had. This kind of dual system is not ended by a process in which Richmond City successfully resists desegregation for eighteen years, and then "desegregates" internally when demographic developments have turned the City so black that "desegregation" makes little change in the racial composition of the schools. In such a process, the principles of *Brown* are not affirmed; they are merely made too unimportant for mobile whites to fuss about. Particularly since the social and economic integration of the Richmond metropolitan area now permits suburban whites to take advantage of everything Richmond has to offer without subjecting their children to schooling with Richmond's blacks, the end result of eighteen years' resistance to

rown is a change in the shape, but not the nature, of e old dual system.

(C) Rampant racial discrimination in housing and other gards throughout the Richmond metropolitan area firmly pports the District Judge's predictive judgment that a chmond-only desegregation plan will hasten the conver- on of the City into a single black ghetto, both by encour- ing white flight and by discouraging white immigra- on. Past and expectable future discrimination in em- oyment and housing interacts with school segregation lock blacks into the isolated existence of the center-city etto. Once this cycle becomes apparent, school authori- s may not ignore it as the setting within which their rangement of school facilities will operate to produce e-race schools. The resulting "black" schools and hite" schools are the State's responsibility; and, whether not their advertent creation would alone violate the nstitution, surely their perpetuation does not satisfy e obligation of either public school officials or a federal trict court to terminate long-time dual school systems oot and branch."

ARGUMENT

I.

Introduction.

Like *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971),[72] this case arises in a State "having a long history of maintaining two sets of schools in a single school system deliberately operated to carry out a governmental policy to separate pupils in schools solely on the basis of race." *Id.*, at 5-6. As in *Swann* and *Green* v. *County School Board*, 391 U.S. 430 (1968),[73] the issues presented are:

> (1) whether the school authorities of such a State have "fully discharged [their] . . . obligation" to "take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch," *id.*, at 437-438; and
>
> (2) whether, if not, the District Court's desegregation order (here, requiring an assignment of pupils across state-created school division lines) exceeded its power or constituted an abuse of discretion under the guiding principle that, "[h]aving once found a violation [of *Brown* v. *Board of Education*, 347 U.S. 483 (1954)],[74] the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *Davis* v. *Board of School Commissioners*, 402 U.S. 33, 37 (1971).[75]

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[72] Hereafter cited as *Swann*.

[73] Hereafter cited as *Green*.

[74] Hereafter cited as *Brown (I)* or simply as *Brown*.

[75] Hereafter cited as *Davis*.

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We state these issues at the outset in order to extricate the case from the grip of several misconceptions which, with all due respect, appear to have controlled the Court of Appeals' disposition of it:

First, in only the most literal sense is it correct to say, as the Court of Appeals does, that "'this is not primarily a case about segregation required by law, because state law has never required segregation as between Richmond and the neighboring school systems.'" (462 F.2d, at 1065, Pet. A. 571.) This is *exclusively* a case about segregation required by law. The fact that Virginia law has "never required segregation as between Richmond and [the counties]"—a singularly needless requirement during the long years before and after *Brown* when all three school systems were internally segregated by race—might be important if

> (a) the issue here were whether Virginia had ever maintained dual school systems in violation of *Brown*, and
>
> (b) the only basis upon which such a violation was asserted was that Virginia operated three separate school divisions in the Richmond metropolitan area.

But that is not this case. Virginia uncontestably maintained dual school systems in Richmond, Henrico and Chesterfield before 1954, in 1954, and interminably thereafter. (See pp. 5-16 *supra*.) There is no necessity to search for "any constitutional violation in the establishment and maintenance of these three school districts [*sic:* divisions]." (462 F.2d, at 1069, Pet. A. 581.) Violations within the divisions are undisputed and indisputable. The only question now is the scope of the remedy for them.

The answer to that question is not controlled or even clarified by the inquiry to which the Court of Appeals

appears to address much of its opinion: whether, without more, the maintenance by a State of separate school divisions for adjacent areas of differing racial concentration violates the Constitution. The latter inquiry is as much beside the point in Richmond, Virginia as it would have been beside the point in *Swann* to consider whether, without more, a State's use of the neighborhood school system violates the Constitution as applied to neighborhoods of differing racial concentration. The Court in *Swann* was not obliged to decide that assigning "pupils to schools nearest their homes" (402 U.S., at 28) would *per se* constitute a violation of the Equal Protection Clause in a district marked by residential separation of the races but "with no history of discrimination" (*ibid.*). It was enough to hold that such an assignment scheme also was not "*per se* adequate to meet the remedial responsibilities of local boards" [76] in a system with a history of discrimination.

So here, the question is not whether the adventitious occurrence of a 70% black school division sandwiched between two 90% white school divisions, all "with no history of discrimination," would violate *Brown*. It is whether a federal district court is required to accept a 70% black school division sandwiched between two 90% white school divisions as the end result and satisfactory resolution of its decade-long efforts to implement *Brown* in "a system that has been deliberately constructed and maintained to enforce racial segregation." *Swann*, 402 U.S., at 28.

Second, it is plain that the District Court's order was designed precisely and solely to implement *Brown*. The Court of Appeals' characterization of that order as having "the purpose of achieving racial balance" (462 F.2d, at 1060, Pet. A. 562) is unwarranted, insofar as "racial

[76] *Davis*, 402 U.S., at 33, 37.

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balance" means anything other than that "degree of actual desegregation" [77] which the Constitution as construed in *Brown* commands. "Racial balance" in its more usual meaning[78] of a non-constitutional "educational policy . . . that . . . each school should have a prescribed ratio of Negro to white students reflecting the proportion for the [area] . . . as a whole," [79] has nothing to do with this case. The District Judge neither sought to achieve, nor did he actually achieve, "racial balance" in this non-constitutional sense.[80]

Third, what the District Judge did seek to achieve was "the greatest possible degree of desegregation in formerly dual systems by the elimination of racially identifiable schools." (338 F. Supp., at 79, Pet. A. 185-86). Pursuing that objective in the light of this Court's admonition to "consider the use of all available techniques," *Davis*, 402 U.S., at 37 (1971), he first examined the extent to which desegregation could be effected within the confines of the Richmond City school division boundary lines, and found it "pathetically incomplete." (338 F. Supp., at 103, Pet. A. 237.) See pp. 66-68, 86-87 *infra*. He then considered the practicability of, and eventually adopted, a desegregation plan that went beyond the boundaries of Richmond. See pp. 38-49 *supra*.

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[77] *Swann*, 402 U.S., at 26.

[78] See *Swann*, 402 U.S., at 16-18; *Board of Education* v. *Swann*, 402 U.S. 43, 45 (1971); *Drummond* v. *Acree*, 409 U.S. —— (1972) (Mr. Justice Powell, in Chambers).

[79] *Swann*, 402 U.S., at 16.

[80] We discuss this point in detail in Appendix A, *infra*. Because of the prominent place of the "racial balance" misconception in the Court of Appeals' opinion, it deserves thorough treatment. But we confine that treatment to an appendix because it *does* concern a misconception, and ought not deflect attention from the essential issues of the case.

By contrast, the Court of Appeals treats the decision to cross Richmond's boundaries as though it were unrelated to the underlying, intractable problems of desegregating the Richmond schools. Remarkably, its opinion does not discuss the District Court's extensive factual findings regarding the inadequacy of Richmond-only desegregation, nor does it even mention the essential predicate of the District Court's order: that all proposed plans of desegregation which dealt with Richmond and the surrounding counties as air-tight compartments left "both individual facilities and entire systems racially identifiable." (338 F. Supp., at 80, Pet. A. 186) Thus the Court of Appeals demands that a justification for crossing school division lines be found in some unconstitutional feature of those lines themselves (462 F.2d, at 1066-1067, 1069, Pet. A. 575-78, 581), rather than in "the implicit command of *Green* v. *County School Board*, 391 U.S. 430 (1968), that all reasonable methods be available to formulate an effective remedy" [81] for violations of the Constitution dating back eighteen years to *Brown*.

But surely *Brown (II)*[82] assumed and *Swann* squarely held that the forms in which a State arranged its public school system, although not themselves unconstitutional, were necessarily subject to adjustment by the district courts in "the framing of equitable remedies to repair the denial of a constitutional right." *Swann*, 402 U.S., at 15-16. Contiguous geographic zones and traditional grade structures, for example, may have no inherent constitutional vice; yet the courts are authorized to alter them where necessary to desegregate a segregated system. The question in the present case is whether, uniquely, school divi-

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[81] *North Carolina Board of Education* v. *Swann*, 402 U.S. 43, 46 (1971).

[82] *Brown* v. *Board of Education*, 349 U.S. 294 (1955) [hereafter also cited as *Brown (II)*].

sion lines are immune against "remedial adjustments . . . made to eliminate the dual school systems." *Swann*, 402 U.S., at 28. It is not whether the establishment and maintenance of school divisions are unconstitutional or have "any unconstitutional consequence" in isolation from the long-time *de jure* segregation of the Richmond area schools. (462 F.2d, at 1069, Pet. A. 581.) It is certainly not whether "various enactments of the Legislature of Virginia structuring Virginia's system of free public schools" are "invalid." (462 F.2d, at 1067, Pet. A. 515) It is simply whether, having made a finding that the crossing of these particular school division lines was "the only remedy promising of immediate success—not to speak of stable solutions" (338 F. Supp., at 100, Pet. A. 230) in the context of its efforts to desegregate the Richmond schools, the District Court lacked power or discretion to cross them.

Fourth, this latter question hardly implicates any general assertion of a sweeping power in the district courts to "compel one of the States of the Union to restructure its internal government." (462 F.2d, at 1060, Pet. A. 562) To be sure, the District Court here did finally order a consolidation of three Virginia school divisions pursuant to the consolidation provisions of Virginia law.[83] But that particular form of an inter-division desegregation plan—as opposed, for example, to an order requiring the assignment of pupils across school division lines[84]—came about

[83] See Appendix D *infra*.

[84] The only critical feature of the relief sought in this case was that it not be compartmentalized by existing school division lines—that some pupils cross division lines, so that schools would not remain racially identifiable. Whether this result was achieved through consolidation of the present school divisions or through some form of pupil exchange, contractual or otherwise, among them was of no particular moment either to the plaintiffs or as a matter of legal principle. Indeed, as noted above (pp. 41-42 *supra*), the

in this case through the "total failure"[55] of the defendant school authorities to offer any alternative plan involving the exchange of pupils between Richmond and the surrounding counties.[56] The Chesterfield and Henrico school boards and the Virginia State Board of Education stood adamantly on the proposition—which the Court of Appeals below has now fully approved—that school division lines are sacrosanct and impermeable against any form of school desegregation decree. The correctness *vel non* of that proposition is at the heart of this case.

II.

The District Court Did Not Lack Power to Order an Inter-Division Desegregation Plan.

A. *The Scope of Federal Judicial Power to Terminate Dual School Systems.*

The District Court believed that its power to fashion a desegregation plan reaching beyond a single school division rested upon two essential predicates. The first was

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amended complaint filed by the plaintiffs sought *either* merger *or* assignment of pupils across division lines within the existing structure (A. 107-08). Virginia law provides more than one mechanism by which such assignment could be accomplished: operation of joint schools (Va. Code Anno. §22-7 [Repl. 1969]), contractual agreement (Va. Code Anno. §22-99 [Repl. 1969]); see generally, *Wright* v. *County School Bd. of Greensville County*, 309 F. Supp. 671 (E.D. Va. 1970), *rev'd* 442 F.2d 570 (4th Cir. 1971), *rev'd sub nom. Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972).

[55] *Swann*, 402 U.S., at 25.

[56] We discuss this point in Appendix B, *infra*. As we mention there, neither the District Court's opinion nor its order precludes modification of the consolidation plan proposed by the Richmond School Board and approved by the District Court, in the event that another equally effective form of inter-division desegregation plan is subsequently brought forward by any party.

that the public schools in the area had been immemorially segregated in violation of the Constitution as construed by *Brown*. The second was that any form of remedial decree confined within the limits of one division would be ineffective "to eliminate from the public schools all vestiges of state-imposed segregation." *Swann*, 402 U.S., at 15.

We submit it is apparent that these two predicates amply sustain federal judicial *power* to extend the remedial process of a district court across state-created school division boundary lines. Questions going to discretion in the exercise of the power (See Part III of this Brief, pp. 82-98 *infra*) should not be confused with the fundamental question of the existence of the power itself. As to the latter, there can be no question.

For the competence of federal equity to secure "complete justice" [87] upon a finding of a violation of federal law is no mere latter-day invention of the second *Brown* decision. It is an established, as it is an indispensable,[88] attribute of the equitable jurisdiction of the federal courts. *E.g., Camp* v. *Boyd*, 229 U.S. 530, 551-52 (1913); *Hecht* v. *Bowles*, 321 U.S. 321, 329-30 (1944); *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 398 (1946); cases cited in notes 108-10, 112-13, *infra*. Specifically vouchsafed by statute since 1871 to enforce the Equal Protection Clause of the Fourteenth Amendment,[89] that power has always been given the widest latitude by the decisions of this Court.

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[87] *Brown* v. *Swann*, 35 U.S. (10 Pet.) 497, 503 (1836).

[88] "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

[89] The history of section 1 of the Civil Rights Act of 1871, now Rev. Stat. §1979, 42 U.S.C. §1983, is canvassed in *Monroe* v. *Pape*, 365 U.S. 167 (1961).

E.g., McNeese v. *Board of Education*, 373 U.S. 668 (1963); *Griffin* v. *County School Board*, 377 U.S. 218 (1964). "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann*, 402 U.S., at 15. See, *e.g., Louisiana* v. *United States*, 380 U.S. 145 (1965). And when "'the public interest is involved . . ., those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.'" *Mitchell* v. *Robert De Mario Jewelry, Inc.*, 361 U.S. 288, 291 (1960). *See Virginian Railway Co.* v. *System Federation No. 40*, 300 U.S. 515, 552 (1937).

So we take it to be settled that, "[h]aving once found a violation," *Davis*, 402 U.S., at 37, the District Court had "not merely the power but the duty to render a decree which [would] . . . so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana* v. *United States*, 380 U.S. 145, 154 (1965). On this record, neither the violation nor the necessity for inter-divisional relief to "achieve the greatest possible degree of actual desegregation," *Davis*, 402 U.S., at 37, and prevent resegregation rooted in the persisting effects of past discrimination, *cf. Raney* v. *Board of Education*, 391 U.S. 443, 449 (1968), can be doubted.

As for violation, it is altogether obvious that unconstitutional dual school systems were maintained in Richmond, Chesterfield and Henrico both before and long after *Brown*. See pp. 11-16 *supra*. Although the District Court was concerned primarily with Richmond City as the original subject of this litigation and the most intractable of the three jurisdictions to desegregate,[20] it also made explicit

[20] The District Court's findings as to the history of segregation in the Richmond City schools are set forth at 338 F. Supp., at 70-

findings of segregation in Chesterfield[91] and Henrico,[92] as well as findings of state-wide segregatory practices by Virginia State educational authorities.[93] The Court of Appeals did not controvert those findings factually, although —consistently with its Balkanized view of *Brown*[94]—it did conclude that the District Court's April 5, 1971 desegregation plan for the operation of the Richmond City schools during 1971-72 (see note 62, *supra*) "belatedly" brought Richmond to the "juncture [where it had] done all it can do to disestablish to the maximum extent possible the formerly state-imposed dual school system within its municipal boundary" (462 F.2d, at 1061, Pet. A. 563); and the Court of Appeals similarly found that, as of the same school year, Henrico and Chesterfield had achieved internal "unitary" status—the latter by eliminating "the racial identifiability of the Central Gardens School" (462 F.2d, at 1065, Pet. A. 571) which had operated as a 96% black facility throughout 1970-71 (338 F. Supp., at 239, Pet. A. 529), and the former by severing formal county ties to the Matoaca Lab School which continues to operate as a 100%

79, Pet. A. 165-84. Its findings that the schools remained segregated at the time of its opinion appear at 338 F. Supp., at 80-81, 90, 100, 103-05, Pet. A. 186-88, 208, 230, 237-39.

[91] The District Court's findings as to the history of segregation in the Chesterfield County schools are set forth at 338 F. Supp., at 133-38, 163-71, Pet. A. 301-13, 368-86. Its findings that those schools remained segregated at the time of its opinion appear at 338 F. Supp., at 80-81, 90, 100, 103-05, Pet. A. 186-88, 208, 230, 237-39.

[92] The District Court's findings as to the history of segregation in the Henrico County schools are set forth at 338 F. Supp., at 127-33, 171-76, Pet. A. 289-301, 387-89. Its findings that those schools remained segregated at the time of its opinion appear at 338 F. Supp., at 80-81, 90, 100, 103-05, Pet. A. 186-88, 208, 230, 237-39.

[93] See 338 F. Supp., at 92-97, 138-57, Pet. A. 212-23, 313-56.

[94] See note 101 *infra*.

black facility within its geographic boundaries (A. 1024). (462 F.2d, at 1065, Pet. A. 571-72.) Since the "opening of the 1971-72 school year . . . took place during the trial of this case" (338 F. Supp., at 104, Pet. A. 238), we believe that the District Court's characterization of "unitary status" in the three divisions as "[m]omentary . . . assuming it existed . . .—which has not been shown" (*ibid.*) is altogether accurate.

So there were uncontestable violations. That brings us to the one major point on which the Court of Appeals and the District Court were thoroughly agreed: that, within the boundary lines of the three school divisions, nothing more can be done than has already been done to "achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *Davis*, 402 U.S., at 37. This conclusion is at once the basis upon which the District Court found that an inter-divisional school desegregation plan was factually necessary,[95] and the basis upon which the Court of Appeals conversely concluded that the three school divisions were each legally "unitary" (462 F.2d, at 1061, 1065, Pet. A. 563, 571-72). But it is undisputed and indisputable that this "unitary" system consists of a black island in a white sea. (See pp. 5-11, 30-33 *supra*.) Richmond, containing a school population that is 69% black[96] (with one-fifth of its schools ranging from 80% to 89% black) (338 F. Supp., at 240-242, Pet. A. 530-32), is entirely surrounded by two counties whose school popula-

[95] ". . . [T]he 'desegregation' of schools within the city and the counties separately is pathetically incomplete. Not only is the elimination of racially identifiable facilities impossible of attainment, but the partial efforts taken contain the seeds of their own frustration." (338 F. Supp., at 103, Pet. A. 237); see also 338 F. Supp., at 100, Pet. A. 230; pp. 43-44 *supra*.

[96] For the 1971-72 school year, 13,500 white students and 29,747 black students were enrolled in the Richmond schools. (338 F. Supp., at 185, Pet. A. 417.)

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tion is 91% white.[97] As between Richmond and the counties, "great disparities in 1971 racial composition . . . [make] both individual facilities and entire systems racially identifiable." (338 F. Supp., at 80, Pet. A. 186.)

Black Richmond schools and white county schools lie virtually on top of one another. (See Table 1, p. 8 *supra.*) Richmond's black John Marshall High School (73% black in 1970, 78% black in 1971) is 1.4 miles (eight blocks) from the 96.1% white Henrico High School; Richmond's black Highland Park School (90% black in 1970, 85% black in 1971) is 1.3 miles from Henrico's 99.8% white Glen Lea School; and the District Court's opinion identifies nine other "schools of extremely divergent racial composition . . . located a very short distance apart" (338 F. Supp., at 190, Pet. A. 428-29) across the school division lines. It is little wonder that an expert witness for the county and state defendants "conceded that a child, observing two schools on different sides of a jurisdictional boundary, with widely disparate racial compositions, would not be sufficiently sophisticated to know most of the forces and factors which brought forth such racial composition, but would simply perceive the existence of black and white schools." (338 F. Supp., at 200, Pet. A. 451.) Those "black and white schools" are perpetuated—immune against conversion into "just schools," *Green*, 391 U.S., at 442—if, as the Court of Appeals held, school division boundary lines are not crossed. (See Table 2, p. 10 *supra.*)

In addition, the black Richmond schools are growing blacker: during the 1970-71 and 1971-72 sessions, "Richmond schools lost over 7,800 white students from their projected figure [*i.e.*, the figure envisaged in the District

[97] In 1971-72, Henrico enrolled 31,299 white students and 3,018 black students, while Chesterfield enrolled 21,588 white students and 2,166 black students. (338 F. Supp., at 185, Pet. A. 417-18.)

Court's interim Richmond-only desegregation plan]" (338 F. Supp., at 185, Pet. A. 417). This loss of "39% of its white students in the past two years" (338 F. Supp., at 103, Pet. A. 237) was a significant consideration in the District Judge's finding that any attempts to desegregate Richmond schools within the closed confines of the Richmond school division would "contain the seeds of their own frustration" (see note 95, *supra*).

To say that the command of *Brown (II)* stops at this point, that the schools of Richmond are now "unitary,"[98] or that "the greatest possible degree of actual desegregation" has been achieved,[99] requires a remarkably narrow conception of *Brown* and of those phrases. To appreciate how narrow it is, one needs only to compare the conditions under which the Fourth Circuit shuts off further constitutional relief in Richmond-Chesterfield-Henrico (see pp. 7-11 *supra*) with the conditions under which this Court approved extensive further constitutional relief in Charlotte-Mecklenburg and Mobile. Plainly enough, if Virginia law had constituted Richmond and the two entirely surrounding counties as a single school division, in the way that North Carolina law includes the City of Charlotte and the County of Mecklenburg within a single school division, the Fourth Circuit would have affirmed—and would have been required by *Swann* to affirm—the District Court's desegregation order here.[100] Or if what lay between

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[98] See *Green*, 391 U.S., at 438; *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 20 (1969).

[99] *Davis*, 402 U.S., at 37.

[100] The Court of Appeals raises no objections to the District Court's exercise of the "equitable remedial discretion" whose "breadth and flexibility" were confirmed in *Swann*, 402 U.S., at 15, 25, 27, other than objections following from the interdivisional character of the District Court's decree. To the extent that those latter objections are practical rather than doctrinal, we discuss them in Appendix D *infra*. For present purposes, it suffices to

Richmond City and Henrico were not an intangible boundary line "so irregular and complex that it often confuses veteran service personnel of both jurisdictions" (RX 89, Ex. A. 34), but a "major north-south highway" (*Davis*, 402 U.S., at 36), the highway could not have stood as an

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note that the methods of desegregation embodied in the Richmond School Board plan that the District Court approved (see pp. 46-49 *supra*) are well within the scope of remedial methods authorized by *Swann*. We have earlier pointed out, for example, that no inordinate transportation of students is involved (note 67, *supra*); the Court of Appeals had no difficulty in concluding that "[t]his is not a bussing case" (462 F.2d, at 1061 n. 2, Pet. A. 563).

Specifically, the number of students who would require bus transportation—including both those who lived beyond walking distance from the school to which they were assigned under the separate divisions' geographic zoning schemes (A. 226-27, 232; 17 R. 65, 96) and those reassigned to achieve desegregation—was projected at 78,000 (A. 232). During a typical 1970-71 school day, Henrico and Chesterfield Counties transported 25,000 and 24,000 pupils, respectively; under its 1971-72 plan (see note 62 *supra*), Richmond anticipated transporting 21,000 pupils (A. 233-34). Thus the metropolitan plan called for additional busing of 8,000 to 10,000 students from among a total of 104,000 *(ibid.)*.

Execution of the plan is within the combined means of the school divisions: they own a sufficient number of buses not only to carry the 78,00 students but also to provide transportation for students participating in extracurricular activities (A. 233-38). Dr. Little estimated the maximum time any student would be bussed as 45 minutes in most instances, up to 55 in a few, and up to one hour in areas of Subdivision Six (see note 67 *supra*)—southern Chesterfield County (A. 238). These times are comparable to existing county route travel times and those proposed for 1971-72 in Richmond (RX 79, 80, 91; HX 32; CX 29; A. 238, 988; 29 R. 205), and the Chesterfield County Superintendent of Schools testified that a one-hour trip was not inordinate (20 R. 79, 137-38). Indeed, some students were transported as long as two hours each way in 1970-71 in that county (29 R. 205). As late as 1965, Henrico was requiring black students to ride long distances and even transfer buses in order to attend segregated schools (29 R. 187), and Chesterfield bussed some black students 1¾ hours to an all-black high school (29 R. 242).

Dr. Little recommended that wherever the lottery method resulted in bus routes of undesirable length, alternative means of pupil assignment such as noncontiguous zoning be employed (see note 67 *supra*).

impassable frontier against *Brown*. Put another way, unless some categorical legal principle invests state-drawn school division lines with the unique capacity to transmute racially identifiable schools into "unitary" ones by passing among them, the implementation of *Brown* in the greater Richmond area remains, as the District Court concluded, "pathetically incomplete" (338 F. Supp., at 103, Pet. A. 237).

The Court of Appeals held that division boundary lines have precisely this legal capacity: that they stand as the absolute, unbudgeable outer limits of federal-court desegregation decrees.[101] The result is that the implementation

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[101] The Court of Appeals states this proposition in two principal ways, and suggests it in a third:

The first way begins with the Tenth Amendment premise that "[o]ne of the powers . . . reserved to the states is the power to structure their internal government" (462 F.2d, at 1068, Pet. A. 579), and proceeds to the conclusion that school district lines, as components of that structure, may not be breached by a federal court unless they have been " 'used as an instrument for circumventing' " constitutional rights of racial equality (462 F.2d, at 1069, Pet. A. 580). In this formulation, the Fourth Circuit apparently conceives an "instrument" as something "intended to circumvent" the Constitution (462 F.2d, at 1068-69, Pet. A. 580); hence it holds that the boundary lines of local governmental units are unalterable by a federal court seeking means to effect desegregation "absent invidious discrimination in the establishment or maintenance of . . [those] units" (462 F.2d, at 1060, Pet. A. 562), or invidious "motivation" in the placement of the lines (see note 102, *infra*). Related to this theory is the court's statement that "[t]o approve the consolidation of these three school districts would require us to ignore the tradition and history of the Commonwealth of Virginia with respect to its establishment and operation of schools, as well as hold invalid various enactments of the Legislature of Virginia structuring Virginia's system of free public schools" (462 F.2d, at 1066-67, Pet. A. 575; see also 462 F.2d, at 1064, 1066-67, Pet. A. 570-71, 575-78). Notably, the tradition and history of Virginia have been to prefer school segregation to local school district autonomy, while preferring local school district autonomy to desegregation. (See pp. 22-24, Appendix E, *infra*). And to break with this tradition by crossing school district lines for the purpose of segregation, as the District Court did, does not

of the Constitution within a State depends upon the manner in which the State carves up its public school system into administrative units.[102] The further, tragic, result is that

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require the invalidation of any Virginia statutes: it requires only recognition that, by reason of the Supremacy clause, no Virginia statutes (whether or not they are otherwise valid) can confine the power of a federal court to "consider the use of all available techniques" for dismantling dual school systems, *Davis*, 402 U.S., at 37. See pp. 76-77 *infra*. In this setting, the Fourth Circuit's invocation of Virginia tradition and law highlights the inflexible character of its Tenth Amendment holding.

Its second major way of asserting the inviolability of school district lines is to treat individual school districts, which concededly have long maintained the sort of dual school systems condemned by *Brown (I)*, as becoming "unitary" and thus escaping the remedial powers of the federal courts under *Brown (II)*, so soon as desegregation has been pursued to the fullest extent that it can be pursued within the separate boundaries of each district and without crossing district lines. (See 462 F.2d, at 1060-61, 1065, 1069-70, Pet. A. 563, 564-65, 571-72, 580-81, 582-83). Unless "there was ever joint interaction between any two of the units involved (or by higher state officers) for the purpose of keeping one unit relatively white by confining blacks to another" (462 F.2d, at 1065, Pet. A. 572), the units are to be viewed as watertight compartments for purposes of the application of both *Brown (I)* and *Brown (II)*. (462 F.2d, at 1069-70, Pet. A. 582-83.) The Fourth Circuit can find no such joint interaction in the case of Richmond, Chesterfield and Henrico (462 F.2d, at 1065-66, Pet. A. 572-74), in part because racial discrimination has been so pervasively practiced in all three that it could not have differentially driven blacks from one to the other (462 F.2d, at 1066, Pet. A. 573-74).

Third, the Court of Appeals expresses concern over various practical problems that it perceives in the District Court's inter-district desegregation plan (see Appendix D, *infra*), although it nowhere suggests that these problems approach the level of magnitude which would justify reversing a district judge's discretion under *Swann*. See 402 U.S., at 31. This is to say that the *Swann* principles are inapplicable across school district lines. See note 135 *infra*.

[102] The Court of Appeals excepts, of course, cases in which the drawing or maintenance of the boundary lines can be proved to be racially "motivated" (462 F.2d, at 1064, Pet. A. 571), or "invidious" (462 F.2d, at 1069-70, Pet. A. 582-83), or "intended" (462 F.2d, at 1069, Pet. A. 580) or done with the "purpose" (462 F.2d, at 1064, 1065, Pet. A. 571, 572) of segregating the public schools by race. This invidious-motivation test not only flies in the

fulfillment of the hopes of *Brown* is effectively denied to hundreds of thousands of black children locked into urban school divisions which "appear to be completely beyond hope of meaningful desegregation, absent some dramatic change in their boundaries." [103]

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teeth of principles long established and found necessary to protect the right of Equal Protection of the Laws against evisceration. See, *e.g.*, *Cassell* v. *Texas*, 339 U.S. 282, 287-90 (1950) (plurality opinion); *Turner* v. *Fouche*, 396 U.S. 346, 360-61 (1970); *Wright* v. *Council of the City of Emporia*, 407 U.S. 451, 460-62 (1972); *Kennedy Park Homes Ass'n* v. *City of Lackawanna*, 436 F.2d 108, 114 (2d Cir. 1970, per Mr. Justice Clark, sitting by designation); *Chance* v. *Board of Examiners*, 458 F.2d 1167, 1170, 1175-76 (2d Cir. 1972), and cases cited; *Hawkins* v. *Town of Shaw*, 461 F.2d 1171, 1173 (5th Cir. 1972); *Hobson* v. *Hansen*, 269 F. Supp. 401, 497 (D.D.C. 1967), *aff'd sub nom. Smuck* v. *Hobson*, 408 F.2d 175 (D.C. Cir. 1969). *Cf. Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and see *Palmer* v. *Thompson*, 403 U.S. 217, 225 (1971). It is also wholly illusory as a practical matter, in view of the extraordinary difficulties involved in proving that racial animus underlies the failure to change existing divisional boundary lines, even where this is the fact. The difficulties are exemplified in the present case, where the District Court found from the history of Virginia's treatment of school division lines and from the lack of other substantial justifications for insisting upon the inflexibility of those between Richmond and the counties, that "resistance to the [inter-divisional desegregation] proposal appears clearly to be racially based" (see note 137 *infra*), while the Court of Appeals—without disputing the factual bases of this inference—concluded:

> It is not contended . . . that the establishment of the school district lines more than 100 years ago was invidiously motivated. We have searched the 325-page opinion of the district court in vain for the slightest scintilla of evidence that the boundary lines of the three local governmental units have been maintained either long ago or recently for the purpose of perpetuating racial discrimination in the public schools. (462 F.2d, at 1064, Pet. A. 571.)

[103] *United States* v. *Board of School Commissioners*, 332 F. Supp. 655, 677 (S.D. Ind. 1971). At pp. 54-63 of the Petition for Writ of Certiorari herein, we describe in detail these urban areas, where "solutions not involving suburban participation no longer are possible," 1 UNITED STATES COMMISSION ON CIVIL RIGHTS, REPORT: RACIAL ISOLATION IN THE PUBLIC SCHOOLS (G.P.O. 1967 0-243-637) (1967) 154.

If this is to be so, we respectfully suggest there should be some compelling reason why it is so. The reasons advanced by the Court of Appeals are clearly insufficient.

B. *The Court of Appeals' Objections to an Inter-Division Desegregation Plan.*

(1) Throughout its opinion, the Court of Appeals expresses in varying ways the proposition that it is "unable to discern any constitutional violation in the establishment and maintenance of these three school districts [*sic:* divisions], nor any unconstitutional consequence of such maintenance" (462 F.2d, at 1069, Pet. A. 581).[104] We have previously noted at pp. 57-58 *supra*, that this focus appears to confuse the issues of violation and remedy. Violations of *Brown* in all three divisions were established. See pp. 64-66 *supra*. They were not required to be established on the grounds that the school division lines themselves segregated black children,[105] in order to warrant relief which crossed the lines.[106] See p. 60 *supra*.

(2) It is probable that the Court of Appeals concerned itself with issues of "constitutional violation" on the view

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[104] The same theme appears, for example, in the court's acceptance of the proposition that "'this is not primarily a case about segregation required by law, because state law has never required segregation between Richmond and the neighboring school systems'" (see p. 57 *supra*), and in the court's statement of the issue presented in the case as "whether the maintenance of three separate unitary school divisions constitutes invidious racial discrimination in violation of the Fourteenth Amendment" (462 F.2d, at 1065, Pet. A. 572).

[105] It was, of course, neither necessary nor possible for school division lines to segregate black children during the century that they were equally and more than sufficiently segregated by other devices on both sides of the lines.

[106] One might as well demand that the highway traversing Mobile has been demonstrated to be an instrument of segregation in *Davis* before the highway could be crossed as part of a plan to desegregate that city.

that an arrangement of the public schools which was not forbidden by *Brown* "as a matter of substantive constitutional right" [107] could also not be forbidden to the State by a federal court enforcing *Brown*. Upon this view, the District Court was obliged to leave Richmond's school division lines intact unless it could be said that the mere maintenance of those lines between geographic areas of differing racial density was prohibited by the Equal Protection Clause. *Cf. Spencer* v. *Kugler*, 326 F. Supp. 1235 (D.N.J. 1971), *aff'd per curiam*, 404 U.S. 1027 (1972).

The view is fundamentally unsound. Equitable relief "is not limited to the restoration of the *status quo ante*. There is no power to turn back the clock. Rather, the relief must be directed to that which is 'necessary and appropriate in the public interest to *eliminate the effects*'" of the evil that required equity's intervention.[108] It goes without saying that, if the litigation is protracted and the evil takes new forms, equity has ample power to pursue it.[109] Indeed, it is the "duty of the court to modify . . . [a] decree so as to assure the complete extirpation of the illegal" conduct.[110]

School desegregation cases have always proceeded on these premises, as *Green* and *Raney* v. *Board of Education*, 391 U.S. 443 (1968), attest. The square holdings of *Swann* and of the "splinter district" cases last Term[111] finally

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[107] *Swann*, 402 U.S., at 24.

[108] *Ford Motor Co.* v. *United States*, 405 U.S. 562, 573 n. 8 (1972) (emphasis in original).

[109] See *United States* v. *Armour & Co.*, 402 U.S. 673, 681 (1971) (dictum).

[110] *United States* v. *United Shoe Machinery Corp.*, 391 U.S. 244, 251 (1968).

[111] *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972); *United States* v. *Scotland Neck City Board of Education*, 407 U.S. 484 (1972).

conclude the issue. For in each of those cases the relief approved by the Court overrode arrangements of a school system which the Court assumed would not themselves violate *Brown*.

(3) Nor does the Court of Appeals rest on firmer ground insofar as it precludes inter-division relief for failure to find that the school division lines had an "unconstitutional consequence" in the Richmond setting. Desegregation decrees are designed to end segregation, not merely its methods and its causes. It has never been thought prerequisite to the modification of some aspect of a segregated system that the particular aspect modified be shown to have an unconstitutional operation or effect. To the contrary, "equity has the power to uproot all parts of an illegal scheme—the valid as well as the invalid." [112] The point has been made again and again in anti-trust cases:

> A trial court upon a finding of a conspiracy in restraint of trade and a monopoly has the duty to compel action by the conspirators that will, so far as practicable, cure the ill effects of the illegal conduct, and assure the public freedom from its continuance. Such action is not limited to prohibition of the proven means by which the evil was accomplished, but may range broadly through practices connected with the acts actually found to be illegal. Acts entirely proper when viewed alone may be prohibited.[113]

So it is in school cases. Each provision of a school desegregation decree "need not rest upon an independent con-

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[112] *United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 148 (1948).

[113] *United States* v. *United States Gypsum Co.*, 340 U.S. 76, 88-89 (1950). In addition to the cases cited in *Gypsum*, see, *e.g.*, *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 189-90 (1944); *United States* v. *Loew's, Inc.*, 371 U.S. 38, 53 (1962).

stitutional violation." *Wright* v. *Council of the City of Emporia*, 407 U.S. 451, 459 (1972).[114] It may speak to whatever arrangements of the school system "would either perpetuate racial segregation in the schools . . . or otherwise frustrate the dismantling of the dual system . . . ." *Id.*, at 471 (dissenting opinion of the Chief Justice). The constitutionality of those arrangements in and of themselves cannot insulate them from modifications necessary to desegregate the schools.

> [I]f a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder the vindication of federal constitutional guarantees. (*North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 45 (1971).)

(4) Thus the Court of Appeals is incorrect that "[t]o approve the consolidation of these three school districts [*sic*: divisions] would require us to . . . hold invalid various enactments of the Legislature of Virginia structuring Virginia's system of free public schools" (462 F.2d, at 1066-67, Pet. A. 575). The consolidation ordered by the District Court is entirely consonant with Virginia law allowing and providing detailed mechanisms for the consolidation of school districts,[115] except on one single point. That point is the provision of Va. Code § 22-30, "enacted since the joinder of state and county defendants in this case" (338 F. Supp., at 99, Pet. A. 228),[116] which prohibits the State Board of Education from creating school districts composed of more than a single city or county without consent of the

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[114] Hereafter cited as *Wright*.

[115] See Appendix D *infra*.

[116] See Appendix E, at p. 5e *infra*.

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local school boards and governing bodies. This provision does not oppose any obstacle to the District Court's decree except the obstacle that is instinct in any situation where a judicial decree is called for—the unwillingness of the party against whom the decree runs to do what it compels without its compulsion. It need not be held "invalid" for the obvious reason that, whether valid or invalid, it cannot trammel the power of a federal court of equity. *See, e.g., Wright; Haney* v. *County Bd. of Education*, 429 F.2d 364, 368-369 (8th Cir. 1970). But to the extent that this latter proposition amounts to a narrow ground of "invalidation" of the provision as applied under the Supremacy Clause, that is no novel or troublesome result. *North Carolina State Board of Education* v. *Swann, supra.*

(5) It is also not a result that can be said to ignore "a fundamental principle of federalism incorporated in the Tenth Amendment . . ." (462 F.2d, at 1061, Pet. A. 563). The Tenth Amendment—expressing "but a truism that all is retained which has not been surrendered"[117]—does not restrict the power of the federal courts to enforce the Fourteenth. *E.g., Baker* v. *Carr*, 369 U.S. 186 (1962); *Hunter* v. *Erickson*, 393 U.S. 385 (1969). And the pronouncements in *Hunter* v. *Pittsburgh*, which the Court of Appeals quotes as confirming the "absolute discretion" of a State with regard to its municipal corporations,[118] do not speak to situations in which the consequences of the exercise of that discretion collide with federally guaranteed rights. The law of this Court governing such collisions has been settled for 100 years,[119] and state power over the

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[117] *United States* v. *Darby*, 312 U.S. 100, 124 (1941).

[118] *Hunter* v. *Pittsburgh*, 207 U.S. 161, 198 (1907), cited in 462 F.2d, at 1068, Pet. A. 579.

[119] *Broughton* v. *Pensacola*, 93 U.S. 266 (1876); *Mount Pleasant* v. *Beckwith*, 100 U.S. 514 (1879); *Mobile* v. *Watson*, 116 U.S. 289 (1886); *Comanche County* v. *Lewis*, 133 U.S. 198 (1890); *Shap-*

organization and structure of political subdivisions has been consistently subordinated to "the fundamental condition that the collective and individual rights of the people of the municipality shall not thereby be destroyed." [120] The Court and the lower federal courts have consequently found no Tenth Amendment obstacle to altering the structure or the boundaries of state school divisions where necessary and proper to enforce the rights of black school children to a desegregated education.[121]

> State legislative district lines, congressional districts and other state political subdivisions have long ago lost their mastery over the more desired effect of protecting the equal rights of all citizens. . . . Political subdivisions of the state are mere lines of convenience for exercising divided governmental responsibilities. They cannot serve to deny federal rights.[122]

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leigh v. *San Angelo*, 167 U.S. 646 (1897); *Graham* v. *Folsom*, 200 U.S. 248 (1906); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960); *Reynolds* v. *Sims*, 377 U.S. 533 (1964).

[120] *Atkin* v. *Kansas*, 191 U.S. 207, 221 (1903) (dictum).

[121] *Wright*; *United States* v. *Scotland Neck City Bd. of Educ.*, 407 U.S. 484 (1972); *Calhoun* v. *Cook*, 451 F.2d 583 (5th Cir. 1971) (referring to the "Comment" in 332 F. Supp. 804, 809-10 (N.D. Ga. 1971)); *Taylor* v. *Coahoma County School District*, 330 F. Supp. 174 (N.D. Miss. 1970-1971), *aff'd*, 444 F.2d 221 (5th Cir. 1971); *United States* v. *Texas*, 321 F. Supp. 1043 (E.D. Tex. 1970), 330 F. Supp. 235 (E.D. Tex. 1971), *modified and aff'd*, 447 F.2d 441 (5th Cir. 1971); *Lee* v. *Macon County Board of Education*, 448 F.2d 746 (5th Cir. 1971), 455 F.2d 978 (5th Cir. 1972); *Bradley* v. *Milliken*, 6th Cir. Nos. 72-1809, -1814, decided December 8, 1972 (rehearing en banc pending). Pairing of schools across school district lines was also ordered in *Robinson* v. *Shelby County Board of Education*, 330 F. Supp. 837 (W.D. Tenn. 1971), *aff'd*, 467 F.2d 1187 (6th Cir. 1972).

[122] *Haney* v. *County Board of Education*, 410 F.2d 920, 924, 925 (8th Cir. 1969), *subsequent history in* 429 F.2d 364 (8th Cir. 1970).

(6) Ultimately, this latter point is what the Court of Appeals misses. Its opinion comes at the case as though the Fourteenth Amendment and *Brown (I)* spoke severally to the individual school divisions in the State of Virginia, rather than to the State itself. Conceding that each of the divisions of Richmond, Chesterfield and Henrico long maintained dual school systems, it inquires whether each has made its separate peace with the Constitution.

Because each has done all that it can do within its own boundaries, the Constitution is satisfied. Schools that were built to be or become black schools before *Brown* and during seventeen years of recalcitrance thereafter may remain black schools. Previously white schools may remain white schools. So long as the black schools and the white schools are a mile and a half apart on either side of a school division line, no one is responsible. The State of Virginia is not responsible, because—having chosen to assert its prerogative powers only in support of segregation (see pp. 18-24 *supra*)—it now chooses to take no further action.

This approach cannot be squared with authority or reason, with the premises of the Fourteenth Amendment or the promises of *Brown*. To be sure, the named party-defendants in the *Brown* cases were local school systems within the States of Virginia, Kansas, South Carolina and Delaware. But they were not constitutional independent contractors. Each was operating its schools under the segregatory compulsion of state law, and the meaning of *Brown (I)* was to declare those state laws—and every aspect of the dual systems emanating from them—unconstitutional. As Judge Wisdom put it in *United States* v. *Jefferson County Board of Education*, 372 F.2d 836, 847 (5th Cir. 1966), *aff'd en banc*, 380 F.2d 385 (5th Cir. 1967): "The two *Brown* decisions . . . compelled seventeen states,

which by law had segregated public schools, to take affirmative action to reorganize their schools into a unitary, non-racial system." If the *Brown* decisions themselves left any doubt of this, *Cooper* v. *Aaron*, 358 U.S. 1 (1958), did not. "State authorities were thus duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system." *Id.*, at 7.

Two principles are essential here. The first is that "[t]he fundamental guarantee of equal treatment at the hands of the State cannot be thwarted by the fragmentation of decision making."[123] "The United States Constitution recognizes no governing unit except the federal government and the state."[124] For the long-time growth of racially identifiable black schools within the City of Richmond, it is the State of Virginia, not Richmond alone, that must answer to the Constitution.[125] And its answer cannot be that Richmond is an island, any more than that Prince Edward County[126] or Emporia[127] was.

The second principle is that "[t]he affirmative obligation to seek means of disestablishing state-imposed segregation must be shared by all agencies, or agents of the state . . . who are charged by law with, and who exercise, official

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[123] Brief for the United States as *Amicus Curiae*, in *Griffin* v. *County School Board*, 377 U.S. 218 (1964) (O.T. 1963, No. 592), p. 20.

[124] *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649, 658 (E.D. La. 1961) (three-judge court), *aff'd*, 368 U.S. 515 (1962).

[125] Virginia law invests state officials with extensive supervisory and policy-making responsibilities, as well as elaborate administrative functions, in the operation of the public schools. See Appendix C, *infra*.

[126] *Griffin* v. *County School Board*, 377 U.S. 218 (1964).

[127] *Wright*.

public school functions." [128] That principle unquestionably reaches both the state and the county defendants here. For many years, they had been participants in the dual system that the District Court sought to end. If affirmative acts, the discharge of affirmative obligations, was necessary by them to disestablish the dual system, the District Court could command them to act.

The contrary conception supposes, as Judge Winter's dissent below puts it, that "each political subdivision is free to operate in its own orbit" (462 F.2d, at 1076, Pet. A. 595) —that neither is a school district obliged to look beyond its own boundaries for available and practicable desegregation techniques, nor is the State obliged to assist it to find them. We submit that *Brown* clearly imposes such obligations.

Within a district, the obligation of *Brown* is to "consider the use of all available techniques including restructuring of attendance zones," with a view to "effectiveness" and to "the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." [129] The practicalities may differ when a division line is reached, but not the obligation to consider them. Maximum feasible desegregation remains the objective, and the State remains constitutionally bound to seek it. Especially where state law and practice provide mechanisms for the ready effectuation of inter-division plans,[130] it would be an un-

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[128] *Franklin* v. *Quitman County Board of Education*, 288 F. Supp. 509, 519 (N.D. Miss. 1968). *Accord: Lee* v. *Macon County Board of Education*, 267 F. Supp. 458, 478-79 (M.D. Ala. 1967) (three judge court), *aff'd sub nom. Wallace* v. *United States*, 389 U.S. 215 (1967); *United States* v. *Texas*, 321 F. Supp. 1043, 1056-1057 (E.D. Tex. 1970), 330 F. Supp. 235 (E.D. Tex. 1971), *modified and aff'd*, 447 F.2d 441 (5th Cir. 1971).

[129] *Davis*, 402 U.S., at 37.

[130] See Appendix D, *infra*.

warranted limitation upon *Brown* to say that they need never be considered. In Virginia, with its history of the use of inter-division mechanisms for the purposes of segregation,[131] it would be a travesty.

III.

The District Court Did Not Abuse Its Discretion in Ordering an Inter-Division Desegregation Plan.

Thus far, we have spoken to the question of power, not discretion. We have urged that the "broad remedial powers" [132] of the federal district courts in school desegregation cases are not categorically confined by state-created school division boundary lines. Crossing the lines may therefore be one of the "available techniques" [133] to be considered in an appropriate case.

But the absence of a "flat" or "absolute prohibition" [134] against the crossing of division lines does not mean that decisions to cross lines should be made routinely, or without good cause. Ordinarily considerations of efficiency both in the management of litigation and in the administration of desegregation plans will impel the district judge first to consider—as Judge Merhige did here—whether desegregation can be practicably effected by a single-division plan.

Even if he concludes that the shortcomings of proposed single-division plans require his consideration of inter-division alternatives, he may encounter specific problems in

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[131] See pp. 22-24 *supra*; pp. 84-86 *infra*.

[132] *Swann*, 402 U.S., at 27.

[133] *Davis*, 402 U.S., at 37.

[134] *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 46 (1971).

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going beyond the division that suggest the advisability of remaining within it. These, certainly, are among the "practicalities of the situation" that he is obliged to take into account. *Davis,* 402 U.S., at 37. In the present case, the District Court made a thorough canvass of those practicalities and concluded that "Educational and Administrative experts have testified that the proposed [inter-division] plan is a sound and feasible one, educationally and administratively, and the Court so finds." (338 F. Supp., at 192, Pet. A. 432.) That conclusion is fully supported by the record.[135]

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[135] Plainly the Court of Appeals did not reverse the District Court for abuse of discretion in this or any other regard; its decision was placed upon the ground of outright lack of legal power to go beyond the Richmond City limits. See pp. 50-51 *supra.* Nevertheless, it did express concern about three practical aspects of the plan approved by the District Court: the size of the resulting consolidated division (see 462 F.2d, at 1062, Pet. A. 566), "practicalities of budgeting and finance that boggle the mind" (see 462 F.2d, at 1068, Pet. A. 578), and an asserted disregard for policies of Virginia law (see 462 F.2d, 1066-68, Pet. A. 575-78). We discuss the size of the division, with particular reference to student transportation, in notes 67, 100, *supra;* further matters relating to size appear in Appendix D, *infra.* The subjects of financing and consistency with Virginia law are also treated in Appendix D. We think that examination of these materials will disclose: (1) that the Court of Appeals' concern for size—which is voiced in passing, without asserting any conclusion—relates neither to problems of transportation nor to problems of administration; and that there are no such problems of significance; (2) that the finance and budgeting problems are overstated, and represent a substitution of the judgment of the Court of Appeals for that of the District Court which—if the Court of Appeals had undertaken to dispose of the appeal upon this ground—would exceed the scope of appellate review of the District Court's equitable discretion under *Swann;* and (3) that the District Court's order assiduously follows, and is fully supported by, detailed provisions of Virginia law except in one regard: that it overrides the veto against consolidation which Virginia law gives to the counties and their school authorities, see pp. 76-77 *supra.* This last point is therefore not one of practicality at all; it is a restatement of the Court of Appeals' Tenth Amendment ground.

Beyond these practical considerations, it may also be appropriate for the district judge to insist upon a strong demonstration of need before resorting to an inter-division plan. Settled forms of local school administration doubtless should command substantial respect, even though, when a clear showing is made that they "impede the disestablishing of a dual school system, [they] . . . must fall." *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 45 (1971). On the record now before the Court, both the evidence and the district judge's findings of need are compelling (see pp. 5-35, 42-45 *supra*); and additional factors vitiate the weight that might ordinarily be given to the Richmond-Chesterfield-Henrico school division lines:

A. *Crossings of the Lines to Promote Segregation and Other State Interests.*

As we have pointed out at pp. 22-24, 29 *supra*, Virginia's school division lines which are now erected as insurmountable barriers against desegregation have historically "been ignored when necessary to serve public educational policies, including segregation." (338 F. Supp., at 113, Pet. A. 257; see also 338 F. Supp., at 83, 100, 155-161, Pet. A. 193, 231, 352-64). They "have never been obstacles for the travel of pupils under various schemes, some of them centrally administered, some of them overtly intended to promote the dual system." (338 F. Supp., at 83, Pet. A. 193.) Not only have children been assigned to schools across those lines—most notably, black children sent to black schools pursuant to the policy of *apartheid*—(*ibid.*; see pp. 22-24 *supra*), but the entire structure of local school-division autonomy was promptly scrapped in the first throes of Virginia's massive resistance to *Brown*, and thereafter reassumed subject to various segregatory exceptions such as tuition grants (see pp. 18-20 *supra*; 338

F. Supp., at 84, 92-95, 119-123, 138-146, Pet. A. 194, 212-20, 271-81, 313-31).

Indeed, the post-*Brown* history of public school organization in Virginia is characterized by extreme fluctuation in the extent to which local school divisions determine and delimit such matters as pupil assignment: the only consistent thread seems to be that the role of the divisions waxes or wanes in whatever measure seems best suited to preserve racial separation in the schools. This history, which we collect in Appendix E, *infra*, casts the gravest doubt upon the Court of Appeals' conclusion that the maintenance of the boundary lines between Richmond and the counties has been altogether neutral and uninfluenced by racial considerations.[136] To the contrary, it sustains the District Court's conclusion that the extreme protectiveness displayed by the counties in regard to their boundaries reflects less a concern for local autonomy than a desire to keep blacks out of the county schools.[137] But, however that may be, surely "[b]arriers which did not prevent enforced segregation in the past [should] . . . not be held to prevent conversion to a full unitary system."[138] And a concern for the integrity of school division boundary lines that has been conveniently ignored in the service of other interests preferred by Virginia law and practice should not

[136] See note 102, *supra*.

[137] "Considering the historic flexibility of political subdivisions in the state and in this area in matters of pupil exchange across political boundaries and in the cooperative operation of other public utilities, in view of the several statutory patterns—part of the public policy of the state—under which cooperative ventures can be undertaken, and in view of the fact that school operation in the counties has always entailed transportation times and distances similar to those involved in the suggested metropolitan plan, resistance to the proposal appears clearly to be racially based." (338 F. Supp., at 100, Pet. A. 231.)

[138] *Henry* v. *Clarksdale Municipal Separate School District*, 433 F.2d 387, 394 (5th Cir. 1970).

now be treated as infrangible so soon as it collides with the federal constitutional interest in desegregating schools.

B. *The Indurate Quality of Segregation in the Richmond Area Schools.*

On this voluminous record, the District Judge properly determined that the purposes of *Brown* required him to look beyond the Richmond City limits in order to "eliminate from the public schools all vestiges of state-imposed segregation." [139] *Brown's* essential concern was the stigma of inferiority that segregation visits on its victims, together with the debilitating effect of that stigma on black children. The "effectiveness" [140] of a decree enforcing *Brown* therefore depends on whether it succeeds in rooting out of the schools all arrangements which perpetuate the stigma or reinforce its effects.

This is why *Green* focused upon "[r]acial identification" of schools as to the evil to be remedied. (391 U.S., at 435.) It is why *Swann* recognized a presumption against one-race schools, even in areas of preponderately one-race occupancy. (402 U.S., at 26.) It is why *Wright*, harkening back to the language of *Brown* itself, took account of "adverse psychological effect" in forbidding the secession of white splinter districts. (407 U.S., at 466.)

In the present case, the District Court's conclusion that a Richmond-only desegregation plan would be "pathetically incomplete" (see note 95, *supra*) rests upon its finding that the history and conditions of the greater Richmond schools make "both individual facilities and entire systems racially identifiable" (see p. 43 *supra*). That finding was based not merely upon the gross indications we have described

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[139] *Swann*, 402 U.S., at 15.

[140] *Davis*, 402 U.S., at 37.

above: —the enduring, entrenched resistance to Brown[141] and perseverance of widespread racial discrimination[142] in a region marked by intense and increasing social and economic integration[143] and racial isolation,[144] where 70% and 80% black Richmond schools closely adjoin 90% white county schools,[145] and the total black school population of Richmond is approximately 70% as compared with less than 10% in the surrounding counties.[146] It was also based upon a multitude of details from which "identifiability—a perception of students, faculty and community perception—[in] . . . the historical context within which a school of disproportionate composition exists"—could be inferred (338 F. Supp., at 80, Pet. A. 187).[147]

Within this historical context, a desegregation plan that left black city schools and white county schools facing each other across the imperceptible division boundary lines surrounding Richmond would amount to a betrayal of *Brown*, for numerous reasons.

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[141] Pp. 11-16, 18-22 *supra*.

[142] Pp. 33-35 *supra*.

[143] Pp. 25-29 *supra*.

[144] Pp. 30-33 *supra*.

[145] Pp. 5-11 *supra*.

[146] P. 66 *supra*.

[147] For example, virtually all of the schools built and opened as black schools prior to 1954 which are still in operation remain black. See note 151, *infra*. Similarly, schools intentionally constructed after *Brown* to serve predominantly black or white populations retain their initial character with few exceptions. See pp. 16-17 *supra*. The professional educators whose testimony was credited by the District Court were in accord that the schools —and, indeed, entire school systems—were identifiable by race. *E.g.*, A. 430, 437. And there can be little doubt that the community and schoolchildren also perceive the gross racial disproportions in the schools. See A. 1215-16.

(1) Whatever might be the case in systems never segregated by law, the "white" school and the "black" school have a plain meaning in *Virginia*. Before *Brown*, they stood for white supremacy; after *Brown*, they stood for the success and ingenuity of state officials in maintaining white supremacy despite the Constitution. Virginia and the three Richmond area school divisions never accepted *Brown*. They resisted it by every means within their power. See pp. 11-16, 18-22 *supra*. "This deliberate perpetuation of the unconstitutional dual system can only have compounded the harm of such a system." *Green*, 391 U.S. at 438. It did:

(a) Official resistance—and particularly Virginia's massive resistance—to school desegregation put the stamp of public approval upon racist attitudes[148] which assured that black separation signified black inferiority.[149] These attitudes, reinforced by eigh-

[148] In *NAACP* v. *Patty*, 159 F. Supp. 503, 515-16 (E.D. Va. 1958), *rev'd on other grounds sub nom. Harrison* v. *NAACP*, 360 U.S. 167 (1959), the three-judge court described the effect of the massive resistance legislation upon public sentiment toward school integration:

> It was in this setting [footnote omitted] that the Acts now before the court were passed as parts of the general plan of massive resistance to the integration of schools of the state under the Supreme Court's decrees. The agitation involved in the widespread discussion of the subject and the passage of the statutes by the Legislature have had a marked effect upon the public mind which has been reflected in hostility to the activities of the plaintiffs in these cases. This has been shown not only by the falling off of revenues, indicated above, but also by manifestations of ill will toward white and colored citizens who are known to be sympathetic with the aspirations of the colored people for equal treatment, particularly in the field of public education.

[149] Dr. Robert Green, a black educational psychologist who lived in Prince Edward County, Virginia while directing a United States Office of Education study of the effects of that county's

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teen years of calculated evasion of a plain constitutional command, today provide the setting for community perception of the significance of neighboring predominately-white and predominately-black public school facilities.[150]

(b) The repeated pattern of conversion of formerly white schools into predominately black schools without more than a fleeting and unstable period of integration[151] emphasizes that this process involves no repudiation of the dual system. Schools such as Richmond's 70% black facilities are not perceived

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school closing (A. 1251), testified that the pronouncements and actions of State officials in support of "massive resistance," the closing of the Prince Edward County schools, etc., all had a "very long-range unhealthy and negative impact" upon black children (A. 1261). He stated that, in the context of this history, 70%-black Richmond schools and 90%-white county schools would have that same negative impact upon black pupils (A. 1262).

[150] One of the educational expert witnesses for the state and county defendants agreed that the history of massive resistance would affect perception of the Richmond area schools as segregated or integrated (A. 1199), and that a child would be aware of the predominantly black composition of the Richmond schools but not sophisticated enough to comprehend that it resulted from the intangible political jurisdiction boundary (A. 1215-16).

[151] During the past decade and throughout the period when "free choice" or other ineffective approaches to desegregation were being implemented in the city and county systems, numbers of schools have undergone substantial shifts in racial composition from white to black (see 338 F. Supp., at 234-42, Pet. A. 524-32). This process was not limited to Richmond schools, but is illustrated by the increasingly black student body composition at Henrico's Central Gardens Elementary School (338 F. Supp., at 238, Pet. A. 529), which in 1964-65 was an all-white school (A. 589). No black school enrolled a substantial number of white students during this period until the implementation of the interim Richmond plan in 1970-71 and the Central Gardens pairing in 1971-72. The Court of Appeals' decree will increase the number of facilities which have undergone the transition from white to black, as shown by the 1971-72 enrollment figures for Richmond schools (338 F. Supp., at 240-42, Pet. A. 530-32).

as desegregated; they are perceived merely as new locations of segregation.

(c) Nor is this segregation seen as ended when the Richmond City schools, after having been maintained for years in flagrant violation of the Constitution, finally accede within the limits of a City grown so black—and growing blacker—that acceding makes but very little difference now and soon may make none at all.[152] Meanwhile, the capacity of the suburbs to absorb whites has increased;[153] whites may live in the counties and have all the benefits of Richmond for less than a half hour's drive;[154] and *their* schools remain 91% white. Surely even the proverbial dog would know that in this process he has not been tripped on but been kicked.

(d) The very diversity of methods by which Virginia school authorities have sought to evade *Brown*[155] strongly reinforces the perception that a

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[152] See pp. 31-33, 67-68 *supra*.

[153] See HX 24 [lots and subdivisions developed, 1947-71]; HX 24-A [multi-family units, 1960-71]; HX 25, p. 1-3; CX 21 [subdivisions developed, 1950-70]; 27 R. 201-02 [Chesterfield subdivisions developed, 1951-70].

[154] See p. 25 *supra*.

[155] In earlier sections of this Brief we have enumerated in considerable detail the wide range of devices by which Virginia officials have sought to avoid public school desegregation: attempted nullification of *Brown* by the General Assembly, school and school system closings, removal of assignment powers from local division boards, assignment of black students to regional schools, complex pupil placement procedures as a prerequisite to transfer to integrated facilities, "free choice" plans, neighborhood geographic zoning, construction of new schools in locations accessible only to students of one race (sometimes combined with the refusal to furnish student transportation [*cf. Brewer* v. *School Bd. of Norfolk*, 456 F.2d 943 (4th Cir.), *cert. denied*, 406 U.S. 905 (1972)]).

Richmond-only desegregation plan would mark the ultimate success of their efforts. Having failed at all else, [156] they have at last found the trick (with the assistance of legislation enacted during this lawsuit):[157] reliance upon school division boundary lines to preserve the affluent suburbs as havens[158] for all-white schools.

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pupil tuition grants and scholarships affording access to public or private segregated schools, non-cooperation with HEW, *etc.* See pp. 16-22 *supra*. To this roster will now be added, as the result of the decision of the Court of Appeals, a rigid insistence upon maintaining existing school division boundaries irrespective of the containment of blacks and the impact upon desegregation.

[156] *See, e.g., James* v. *Almond*, 170 F. Supp. 331 (E.D. Va.), *app. dis'md* 359 U.S. 1006 (1959) (school closing and operation—Governor); *Griffin* v. *County School Board*, 377 U.S. 218 (1964) (school closing—local board); *Griffin* v. *State Board of Education*, 296 F. Supp. 1178 (E.D. Va. 1969) (Tuition grants and "scholarships"); *Green* (free choice); *Wright* (splinter districts); *Bradley* v. *School Board*, 382 U.S. 103 (1965) (faculty assignments).

[157] As indicated in Appendix E, at p. 5e *infra*, following the filing of the joinder motion in the present case the 1971 General Assembly amended Va. Code Anno., § 22-30 to forbid the State Board of Education from including more than a single political subdivision in a school division without the consent of the school boards and governing bodies concerned.

[158] Virginia blacks tend, of course, to be poorer than Virginia whites (PX 125); and living in the counties is generally more expensive than living in Richmond. Indeed, some of the witnesses at the trial explained the contrasting racial demographies of Richmond and the two surrounding counties as a result of economic differentials (*e.g.*, A. 167, 501, 862). The relationship had earlier been noted by various of the consultants' studies introduced at the trial. For example, the authors of the 1967 SUA study performed on commission for Henrico and Chesterfield Counties (HX 25, pp. III-2, -5) wrote:

> The outward movement of people has been from the relatively higher income, white segment of the population . . . .
>
> . . .
>
> Chesterfield has a very low percentage of lower income groups, though the percentage has been increasing. Due to the recent

(2) The high degree of social and economic integration of the Richmond metropolitan area (see pp. 25-29 *supra*) has two important implications in this connection:

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development of the County, most of the dwelling units are relatively new. There are few low rent facilities. For this reason, no significant change is anticipated in the number of low income families. For the same reason, the percentage of non-whites in the County is expected to remain almost constant.

Public housing and federally-assisted, low-income, multi-family projects are virtually all located in black areas of the City (A. 605-11, 616-17; see also, A. 472), as are the greater number of unskilled, low-income jobs (A. 176). In 1969, 73% of all families in the greater Richmond area which earned less than $3,000 annually resided in the City of Richmond. They made up 11.6% of Richmond's total number of resident families—but 19.9% of Richmond's resident black families earned less than $3,000 in that year. UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, CENSUS TRACTS, CENSUS OF POPULATION AND HOUSING, *Richmond, Va. SMSA* (G.P.O. PHC(1)-173, 1972), pp. P-31, Table P-4, Income Characteristics of the Population: 1970, and P-45, Table P-6, Economic Characteristics of the Negro Population: 1970 See also, A. 158. These families generally find housing available to them only in the City:

(a) It causes residents to perceive the metropolitan area as the relevant community for purposes of

	*Richmond**	*Chesterfield**	*Henrico*
Median Value, Single-Family Dwellings on less than 10 acres, owner-occupied	$ 15,400	$ 20,800	$ 18,100
Number of such single-family dwellings valued at less than $10,000	6,518	1,685	2,454
% of all such single-family dwellings valued at less than $10,000	17.5%	11.8%	7.4%
Number of such single-family dwellings valued at more than $25,000	6,908	4,724	7,716
% of all such single-family dwellings valued at more than $25,000	18.5%	33.1%	23.4%
Median contract rent, renter-occupied dwellings except single-family dwellings on more than 10 acres	$78	$99	$112

* As with other 1970 Census statistics referred to in this Brief, see notes 44, 52, *supra*, the figures for Richmond and Chesterfield County are affected by the 1970 annexation. Inasmuch as the development of Chesterfield County is relatively recent (see comments from SMA study quoted above, this note), it is likely that absent the annexation, the median dwelling value and proportion of low-valued homes in Richmond would have been somewhat lower and those figures for Chesterfield County somewhat higher.

Source: UNITED STATES DEPT. OF COMMERCE, BUREAU OF THE CENSUS, CENSUS TRACTS, CENSUS OF POPULATION AND HOUSING, *Richmond, Va. SMSA* (G.P.O. PHC(1)-173, 1972), p. H-1, Table H-1, Occupancy, Utilization and Financial Characteristics of Housing Units: 1970

Lack of public transportation in the counties also operates to exclude low-income groups (A. 862).

the racial identifiability of schools.[159] Boundary lines that are functionally insignificant in the lives of citizens[160] are not seen as neutral, non-racial explanations for the continued existence of black schools and white schools in close proximity on either side of the lines.[161]

(b) It enables whites to live in Richmond for all practical purposes without sending their children to school with the black children of Richmond. Thus a Richmond-only desegregation plan—particularly in the context of traditional Virginia racial attitudes that have been reinforced by eighteen years of official resistance to desegregation[162]—provides a

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[159] See, *e.g.*:

> . . . I don't see how in this metropolitan area you can separate this issue out. Continuing along the way in which the Richmond school district is developing and which Plan III is likely to further promote, is a school district which would be highly identifiable as a black school district. . . . The fact that you would have in the counties what essentially would be identifiable as a white school system, it is going to be quite obvious to the pupils in the metropolitan area that in a sense you continue to have a dual school district. (A. 437.)

See also, A. 374-76, 445, 562-63.

[160] The lines "coincide with no tangible obstacles and are unrelated to any administrative or educational needs." (338 F. Supp., at 83, Pet. A. 193.) Their location is imperceptible and sometimes bewildering. (See pp. 68-70 *supra*.)

[161] See p. 67 *supra*.

[162] Two decades of official racism expressed in word and deed by Virginia politicians and administrators, see B. Muse, Virginia's Massive Resistance (1961); W. Gates, The Making of Massive Resistance (1964); pp. 18-22 *supra*, has had its effect upon Virginia's white population. See note 148 *supra*. We have previously remarked upon the continuing practice of housing discrimination against blacks by private sellers and real estate brokers (see pp. 33-35 *supra*). We also note the ways in which the white citizens of Richmond, Chesterfield and Henrico have consistently exercised any options made available to them so as to avoid

strong incentive to white flight and a strong disincentive to white immigration. The expectable response of Virginia whites to these stimuli[163] completes the vicious circle that began with, and now intensifies, the perception on the part of blacks and whites alike that the dual system is being continued behind the shelter of school division lines.

(3) Compelling evidence sustains the District Court's findings that racial discrimination in housing is pervasive throughout the greater Richmond area.[164] This discrimination—some of it private, some fostered by governmental agencies[165]—was properly viewed by the District Judge as a factor in his decision that a

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intercourse with blacks: For example, under "free choice" plans, in each school division, whites remained in traditionally white schools or relocated if those schools underwent more than token integration (see pp. 11-16 *supra*; note 151 *supra*); and after the interim plan was implemented in Richmond for the 1970-71 school year, white Chesterfield parents of students assigned to Richmond schools pursuant to the 1970 annexation decree successfully sought to re-enroll their children in Chesterfield schools (A. 485-88). This prevalent climate of resistance to school desegregation is reflected in, and encouraged by, the hostile statements of incumbent public officials (see A. 671-75). Given the decision of the Court of Appeals establishing school division lines as absolute barriers to pupil assignment for desegregation, it is hardly improbable (especially in light of the varied and ingenious anti-integration tactics employed by the Commonwealth in the past, see note 155 *supra*), that white parents will now leave Richmond, new migrants to the area will tend even more than in the past to settle in the counties rather than the City, and additional exclusionary measures strictly limiting the number of blacks entering the counties will be devised.

[163] See pp. 30-35 *supra*.

[164] See pp. 33-35 *supra*. The Court of Appeals accepted these findings (462 F.2d, at 1065, Pet. A. 572), and thought it "deplorable" that "there has been housing discrimination in all three units" (462 F.2d, at 1066, Pet. A. 575). See also note 101, para. 3, *supra*.

[165] The Court of Appeals also accepted the District Court's findings of governmental involvement in housing discrimination. (462 F.2d, at 1065, Pet. A. 572.)

desegregation plan limited to the boundaries of the City of Richmond would be ineffective:

(a) Widespread discrimination of this sort attests eloquently to racial attitudes in whose light the continuation of predominantly black Richmond school facilities will be perceived as the perpetuation of a dual system of inferior Negro and superior white schools.

(b) Such discrimination, together with other patterns of racially discriminatory behavior by whites,[166] forcefully supports the District Court's predictive judgment that a desegregation plan confined to Richmond City would accelerate the development—already well advanced[167]—that is turning the City into an all-black enclave. The court could therefore conclude, as it did, that any plan not embracing the counties would "contain the seeds of [its] . . . own frustration," [168] and that "the only remedy promising of immediate success—not to speak of stable solutions—involves crossing [the county] . . . lines." [169]

(c) In the context of a region so seamed with racial discrimination, it was proper for the District Judge to take account of the tendency of a Richmond-only plan to encourage exclusionary practices in the counties,[170] with the result that school division

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[166] See note 162, *supra*.
[167] See pp. 30-33, 67-68 *supra*.
[168] 338 F. Supp., at 103, Pet. A. 237.
[169] 338 F. Supp., at 100, Pet. A. 230.
[170] By promising whites safe haven behind school district lines, the Fourth Circuit's decision will unquestionably encourage them to seek such havens out and, once there, to employ every public and private means at their disposal to keep them as white as possible. Some of these means (such as rejection of school district consolidation proposals, of public housing projects, of zoning variances for uses threatening to attract black employees) are

> boundary lines would be used as bulwarks of segregation to lock Richmond's black population still more tightly into the self-perpetuating isolation of the center-city ghetto.[171]

"The weighing of these factors to determine their effect upon the process of desegregation is a delicate task that is aided by a sensitivity to local conditions, and the judgment is primarily the responsibility of the district judge." *Wright*, 407 U.S., at 466. Here, as in *Wright*, the District Court's conclusion that to treat Richmond and the counties as separate universes for the purposes of *Brown* would "actually impede the process of dismantling the existing dual system" (*ibid.*) must be respected.[172]

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essentially undetectable; others (such as inflation of property values by the premium paid to purchase the assurance of all-white schools) are innately uncorrectable; still others (such as intimidation of prospective black occupants) are correctable in theory but not in fact. It is one thing, as this Court said in *Swann*, 402 U.S., at 22, not to load a school case with more baggage than it can carry; but it is quite another, as the Fourth Circuit has done here, in deciding a school case, to throw the baggage out in the road where it will foreseeably cause these sorts of "accidents."

[171] The processes of containment, by which blacks are essentially confined to the urban center of the metropolitan area, are developed in the record and summarized in Appendix F, *infra*.

[172] The District Judge in the present case undertook an extraordinarily careful and thorough analysis of all the evidence in reaching his determination. A voluminous record was made in extensive hearings because of the court's desire to hear any evidence which the parties considered relevant (*e.g.*, 26 R. 143). The court then undertook to make detailed, exhaustive factual findings so that the basis for its legal ruling would be clear, and in the course of those findings explicitly resolved testimonial conflicts (338 F. supp., at 115-16, Pet. A. 263; see also, 338 F. Supp., at 202, 203, 206, Pet. A. 456, 466). Throughout the proceedings, the court declined to reach judgments without thorough evidentiary presentations (*e.g.*, 325 F. Supp., at 830 n. 1, Pet. A. 110; 51 F.R.D., at 54-55, Pet. A. 143; 338 F. Supp., at 193, Pet. A. 435) which would familiarize the court with relevant local conditions. And the court considered the matter for four months after the close of the proof before rendering its ruling. In sum, the history of these proceedings and the record reveal a most intensive and comprehensive consideration of all facts and circumstances by the local district judge.

The present case is, indeed, a far stronger one for sustaining the District Court's discretion than was *Wright*. For, compared with the staggering city-county racial disparities and other intractable problems besetting the court below in its efforts to desegregate the public schools in the Richmond area, the difficulties involved in desgregating Greensville-Emporia pale into insignificance. To be sure, in *Wright* "the city and county constituted but one unit for the purpose of student assignments during the entire time that the dual system was maintained." (407 U.S., at 459-460). But the relevance of that fact in the Greensville-Emporia context was to establish that the city and county were appropriately perceived by all concerned as a single educational community within which schools of differing racial concentration would be racially identifiable. Here, the fact of previous political unification is absent, but its place is supplied by the several factors itemized above, on the basis of which the District Court found factually that black Richmond schools and white county schools would be racially identifiable within the historical and practical context of metropolitan Richmond.

Nor is it important that *Wright* involved an affirmative act of withdrawal by the city, whereas here the counties are merely holding aloof from Richmond along previously established boundary lines. That difference might be significant if the issue in *Wright* and in the present case were one of constitutional violation. But, as we have seen,[173] it is not. The question in both cases is whether school authorities have adequately met their obligation to abolish dual systems formerly maintained in unquestionable violation of the Constitution. Such an obligation comports a duty of affirmative action;[174] and, in a situation where affirmative action is required, the plea of mere inaction is no defense.

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[173] Pp. 56-58 *supra*.
[174] See pp. 79-80 *supra*.

CONCLUSION

The power of a federal district court to cross state-created school division lines where necessary to enforce the federal constitutional rights declared in *Brown* is manifest. On this record, in view of the overwhelming problems involved in dismantling the dual school system of Richmond, Virginia—problems which, exacerbated by the eighteen-year resistance of Virginia state and local school officials to *Brown*,[175] assumed "a greater magnitude

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[175] A variety of changing circumstances since 1954, some flowing directly from Virginia's course of resistance to *Brown* and others which commenced independently but have become inextricably entwined with the former, have created new obstacles to the elimination of school segregation in the greater Richmond area through traditional means. The major factors have been discussed previously in separate fashion and we shall attempt here merely to collect and summarize them.

(a) The striking demographic change within Richmond since 1954 (pp. 30-33 *supra*) has altered the guidepost by which substantial internal disproportion may be gauged from less than 50% black to about 70% black. The same period of time has also witnessed a contrasting reduction in black proportion among the county school systems. If, as this Court suggested in *United States* v. *Scotland Neck City Board of Education*, 407 U.S. 484, 490 (1972), the District Court was obliged to consider the likelihood that proposed plans would cause resegregation of the public schools, then he could not fail to perceive the significant danger that implementation of separate plans for the three divisions would result in such resegregation.

(b) Concurrently with the racial changes just noted, the counties surrounding the City of Richmond became increasingly urbanized as they grew significantly in population after 1950. The entire area acquired a new character of social and economic unity (see pp. 25-29 *supra*). As relationships between county residents and city or *vice versa* became more complex, it became increasingly difficult in a realistic, practical, sense for the district court to evaluate a plan for one division without considering its impact upon the others. *Cf. Wright*, at 468. See also pp. 92-95 *supra*.

(c) The persistent efforts of public officials throughout the period to preserve segregation at all costs (see pp. 18-24 *supra*) generated the forces described at pp. 88-91 *supra*, which made the elimination of racially identifiable schools through piecemeal approaches all the more difficult.

(d) Finally, the harm engendered by having had yet another generation of schoolchildren socialized, by their experiences, to

in the present than existed at an earlier date" (338 F. Supp., at 91, Pet. A. 210)—the District Judge did not abuse his discretion in the exercise of that power. The judgment of the Court of Appeals should therefore be reversed.

Respectfully submitted,

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separatism (and this generation having been told that the law of the land forbade that separatism), had to be taken into account by the district court. It is in this context, in particular, that the district court's concern to avoid "sprinkling" or token desegregation is significant.

APPENDICES

APPENDIX A

The Constitutional Basis of the District Court's Desegregation Order

Throughout its opinion, the Court of Appeals repeatedly treats the District Court's decree as one designed to achieve "racial balance" rather than constitutionally compelled desegregation (see 462 F.2d, at 1060, 1062-64, 1068, 1069, Pet. A. 562, 565, 567-70, 578-79, 580). Closely inspected, however, this does not mean what it appears to say. It does not mean either that the District Court undertook to pass beyond the pale of "constitutional violation" into the fields of "educational policy," *Swann*, 402 U.S., at 16, or that the District Court's decree in fact strayed into the educational policy field.

If the Court of Appeals did think that the District Judge was proceeding on some theory of obligation or power to dictate a non-constitutionally-commanded "racial balance," then its discussion of state school division organization, Virginia's supposed law and tradition of local school administration, the Tenth Amendment, and about ninety-nine percent of its twenty-page opinion for reversal was unnecessary. Reversal was compelled by one sentence quoting *Swann* for the obvious proposition—which the District Court here manifestly understood—that "judicial powers may be exercised only on the basis of a constitutional violation," *Swann*, 402 U.S., at 16. The contradistinction between mere "racial imbalance" and "state-imposed segregation in violation of *Brown I*." *Swann*, 402 U.S., at 17-18, did not escape the District Judge, however; and the Court of Appeals could not conceivably have thought it did. From the inception of his opinion and throughout all that follows,

Appendix A

Judge Merhige makes uncontestably clear what he is holding:

> The Court concludes, in the context here presented, that the duty to take whatever steps are necessary to achieve the greatest possible degree of desegregation in formerly dual systems by the elimination of racially identifiable schools is not circumscribed by school division boundaries created and maintained by the cooperative efforts of local and central State officials. The Court also concludes that meaningful integration in a bi-racial community, as in the instant case, is essential to equality of education, and the failure to provide it is violative of the Constitution of the United States. [338 F. Supp., at 79-80, Pet. A. 185-86]

The Court of Appeals concedes that the District Court disclaimed any intention of imposing a "fixed racial quota" by its adoption of the Richmond School Board's desegregation plan (462 F.2d, at 1063-64, Pet. A. 569-70). But it concludes that "the adoption of the Richmond Metropolitan Plan in toto by the district court, viewed in the light of the stated reasons for its adoption, is the equivalent, despite disclaimer, of the imposition of a fixed racial quota" (462 F.2d, at 1064, Pet. A. 570). The key to this sentence is the Court of Appeals' own view of what the "adoption of the Richmond Metropolitan Plan in toto" implied: namely, that, insofar as the plan went beyond the Richmond city line, it went beyond the Constitution. For, apart from that view, it could not be said—and the Court of Appeals does not say—that the "use made of mathematical ratios [in the Metropolitan Plan] was . . . more than a starting point in the process of shaping a remedy," *Swann*, 402 U.S., at 25, or that the District Court required "as a matter

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of substantive constitutional right, any particular degree of racial balance or mixing," *id.*, at 24.

To the contrary, the record reflects that the task the District Court set for itself was not the elimination of "racial imbalance," but the lasting eradication of vestiges of state-imposed segregation; and the particular means embodied in the District Court's decree, *i.e.*, adoption of the Richmond School Board's Metropolitan Plan, resulted from the shape given the litigation by the parties, not the Court.

In the first place, the Metropolitan Plan originated with the Richmond School Board—not the District Court—as a means of effectively desegregating schools (A. 247-49).[18] While the outlines of the plan were devised, to be sure, with a consciousness of the overall racial proportions of students in the three divisions together, mathematical balance was not a goal; rather, the plan was shaped by practical considerations. For example, percentages of black and white students in Subdivision Six (southern Chesterfield County) differed significantly from the overall ratio, and from those of the other subdivisions, a fact accounted for by the low density of population and greater geographical area of the subdivision (A. 205, 231-32). Hypothetical pupil exchanges between schools within a subdivision or immediately adjacent thereto, to be based on a birthday lottery, were selected by a computer programmed to equalize bus rides rather than to achieve precisely the same percentage of black and white students at each school (A. 213-18). And the results reflect variances in projected ratios at in-

[18] Dr. Little testified that he had not voiced the possibility of a metropolitan school system in the Richmond area until the duty to *effectively* desegregate schools had been made unmistakably clear by the district court's rejection of the HEW plan (see pp. 36-37 *supra*) (A. 264).

dividual schools ranging between 20% and 40% black in all subdivisions (RX 63; A. 201-06, 214).

Second, the same awareness of the overall ratio which guided Dr. Little in the preparation of the Richmond Board's plan characterized the response of Henrico County educators to HEW's 1971 directive to desegregate Central Gardens Elementary School: the school was clustered with four predominantly white facilities so that each would enroll about 30% black students, rather than being paired with a single white facility (which would have resulted in creation of two majority-black schools) in order to develop a stable desegregation plan (A. 592-95, 970-71).

Third, the Richmond School Board's Metropolitan Plan, which the district court approved, was the *only* plan of inter-division desegregation put before the court by any of the parties. (See Appendix B *infra*.) None of the State or county defendants has ever suggested a plan which would, for example, result in greater variances from the overall ratio by involving fewer schools.

The district court's opinon, from its beginning to its end,[2a] consistently focuses upon the elimination of racially identifiable schools, not the achievement of racial balance.

[2a] *E.g.*, 338 F. Supp., at 79-80, Pet. A. 185-86:

> . . . achieve the greatest possible degree of desegregation in formerly dual systems by the elimination of racially identifiable schools . . .
>
> . . . great disparities in 1971 racial composition, making both individual facilities and entire systems racially identifiable . . . .

338 F. Supp., at 230, Pet. A. 519-20:

> While the viable racial mix contemplated by the plan is educationally sound and would indeed result in a unitary system, variations from that suggested viable mix may be unavoidable. All parties are admonished that it is not the intention of the Court to require a particular degree of racial balance or mixing. If in the implementation of the plan improved modifications seem appropriate, the Court stands ready to entertain them.

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Appendix A

The significance of the court's own analysis is even greater than in the normal case, for the district judge here was particularly sensitive to the impact of racial disproportion upon desegregation plans—also having been the district judge in *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972).

Finally, the Court of Appeals' portrayal of a district judge bent upon attaining an artificial, absolute "racial mix" seems at least inconsistent with the district court's disinclination to reach out to include Hanover County in a greater Richmond area desegregation plan (338 F. Supp., at 193, Pet. A. 435).

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APPENDIX B

The Basis of the District Court's Approval of Consolidation as a Means of Inter-Division Desegregation

As indicated in footnote 66 to the body of the Brief, during the course of pretrial proceedings after joinder of the state and county defendants, counsel for the Richmond School Board announced to the court and to all parties that Richmond would present a metropolitan desegregation plan as a part of its case (see 34 R., 4/16/71 Tr. 34-36). The District Court thereupon directed that the Richmond proposal be made available to counsel in advance of the commencement of the hearings, so that it could be examined by them and so that the state and county defendants could suggest alternative forms of relief more acceptable to them if relief were to be granted (A. 136-42). The court suggested that administrators from the three school divisions confer for the purpose of devising the best form of inter-division plan (A. 141). However, despite a written invitation from counsel for the Richmond School Board to counsel for the County Superintendents, no meetings were held, nor did the county systems' administrators make any attempt to devise their own alternatives (A. 1009-10).

Among all the parties, only the Richmond School Board offered a plan, and it was this Richmond School Board plan calling for consolidation that the District Court eventually embodied in its opinion and order. *Cf. United States v. Board of Education of Baldwin County*, 423 F.2d 1013 (5th Cir. 1970). However, the District Court did not merely accept whatever was put before it. It expressly found the plan feasible (338 F. Supp., at 191, Pet. A. 431-

32) after receiving not only the testimony of its designer that the consolidation form of desegregation plan was selected for reasons of economy and efficiency (A. 195, 197-98, 240) but also information concerning the successful functioning of an existing Virginia division (Fairfax County and City) which enrolled more students than proposed for the new division in the Richmond Board's plan, and which utilized the same sort of decentralized subdistricting proposed by that plan (A. 481-82, 1045). Further, the District Court did not simply approve the plan and direct its implementation. It required a lengthy, detailed and specific planning process to be carried out under the supervision of the State Board of Education, with periodic reporting to the court well in advance of scheduled implementation, to insure that the desegregation plan could and would be smoothly implemented (338 F. Supp., at 246-47, Pet. A. 539-43). Most important, the District Court emphasized its readiness to consider modification of its order, and the plan, in any respect:

The court's opinion and order state that "with the cooperative efforts of the educators within the proposed Metropolitan Plan, perhaps an even better plan will emerge" (338 F. Supp., at 115, Pet. A. 262); that the Court stands ready at any time to consider any proposed modification of the plan to be approved" (338 F. Supp., at 230, Pet. A. 519; see also, 338 F. Supp., at 193, Pet. A. 435); and that the reason why the court finds it "necessary . . . not to await any proposed modifications, but to order the plan to be implemented" is in order that "a metropolitan school system [providing effective desegregation] will be in effect for the commencement of schools in September, 1972" (338 F. Supp., at 115, Pet. A. 262). None of the state and county defendants has ever availed itself of the

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opportunity to present the District Court with an inter-division desegregation plan based on some other method than consolidation. Although these defendants intimated a wish to do so in their stay application to the Court of Appeals (A. 1347-48), they took no steps in that direction even after the Court of Appeals directed continuation of planning toward ultimate effectuation of the Richmond Board's plan pending determination of the appeal. (Pet. A. 553-56).

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APPENDIX C

The Role of Virginia State School Authorities in School Administration and Policy Making

The Virginia State Board of Education and the State Superintendent of Public Instruction are responsible for the general supervision of all public education in the State. Va. Code Anno § 22-2 (Repl. 1969). By law and in practice, the State Board establishes educational policy in a wide variety of areas and its mandates are carried out by the State Superintendent of Public Instruction and the staff of the State Department of Education. In addition, the persuasive power of the State Board of Education as Virginia's leading educational institution is great.

The Virginia Constitution itself, after providing that "[t]he general supervision of the public school system shall be vested" in the State Board of Education, Article VIII, Section 4, lists as the first of the powers and duties of the Board:

> Subject to such criteria and conditions as the General Assembly may prescribe, the Board shall divide the Commonwealth into school divisions of such geographic area and school population as will permit the realization of the prescribed standards of quality and shall periodically review the adequacy of existing school divisions for this purpose.

Article VIII, Section 5a.[1c]

[1c] The State Board never had an opportunity, after enactment of the new Constitution, to examine the adequacy of school divisions because the General Assembly of Virginia, with knowledge of possible impact on this lawsuit (A. 942, 944), immediately required that every city and county be named a separate school division. Va. Code Anno. §22-30 (Supp. 1972). Standards of quality in

Appendix C

By statute or constitutional provision the State Board of Education must establish minimum criteria for local school divisions: it describes the qualifications for division superintendents, Va. Code Anno. § 22-31 (Repl. 1969); it establishes the minimum salary for those officials (which cost is shared by the State and the local division), Va. Code Anno. § 22-37 (Supp. 1972); it establishes the minimum length of the school year for which a local division must operate in order to be eligible for State aid, Va. Code Anno. § 22-117 (Supp. 1972); it establishes the minimum number of pupils required to operate a school, Va. Code Anno. § 22-6 (Repl. 1969); it issues bylaws and regulations governing pupil transportation, Va. Code Anno. § 22-276 (Repl. 1969); it sets rules and regulations for high schools, Va. Code Anno. § 22-191 (Repl. 1969); it prescribes textbooks, Va. Code Anno. §§ 22-295, *et seq.* (Repl. 1969); and it certifies teachers for employment by local divisions, Va. Code Anno. § 22-202 (Repl. 1969).

The State Board of Education and officers of the State Department of Education perform other functions with direct effect upon the conduct of local educational systems: the State Board may appoint division superintendents in the event of vacancies which are not promptly filled by division boards, Va. Code Anno. § 22-33 (Supp. 1972); the Virginia Public School Authority, successor to the Literary Fund, creates a market to permit school expansion by purchasing school district bonds, Va. Code Anno. §§ 22-29.2

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education were adopted by the State Board in 1971 (SX 8). By statute, local divisions are required to levy a school tax sufficient to maintain those standards, Va. Code Anno. §22-126.1 (Supp. 1972). The State Board of Education through the State Attorney General may compel appropriation of and sufficient funds to meet the standards, Va. Code Anno. §22-21.2 (Supp. 1972).

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to 22-29.15 (Supp. 1972);[2c] the Superintendent of Public Instruction must approve all school building plans and specifications, Va. Code Anno. § 22-152 (Repl. 1969), and prepares model specifications and plans for use by local divisions, Va. Code Anno. § 22-166.1 (Repl. 1969);[3c] indeed, the State Board "is authorized and required to do all things necessary to stimulate and encourage local supervising activities and interest in the improvement of the elementary and secondary schools . . ." Va. Code Anno. § 22-21 (Repl. 1969).

Virtually the only area related to education in which the State Board and Department did not have, or would not accept, responsibility and leadership was the desegregation of the public schools. The assistant State Superintendent who served as the liaison between the United States Department of Health, Education and Welfare and the State Education Department declined to express an opinion as to whether strong support for compliance with the law on the part of State Education officials would not have eased the problems faced by local school systems in meeting their affirmative constitutional obligations (A. 699-700). But the Chairman of the Richmond School Board felt that if the State Board had led the way, Richmond (and presumably other school districts) would have complied (A. 911-12).

[2c] The State has also made special appropriations for school construction purposes. See Va. Code Anno. §22-146.1 (Repl. 1969).

[3c] See SX 4.

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APPENDIX D

The Practical Operation of the District Court's Desegregation Order

The detailed order of the district court requires execution of the various steps necessary to consolidate the Richmond, Chesterfield and Henrico school divisions in order to implement the approved plan of school desegregation (338 F. Supp., at 244-46, Pet. A. 536-40). It is noteworthy that the entire process is completely in accord with, and guided by, existing Virginia law and practice. No part of the Richmond School Board's plan required the district court to ignore policies and procedures established by Virginia statutes.

Under Virginia law at the time of the district court's decree[1d] two or more school divisions may be designated a single school division by request of their school boards and the governing bodies of the political jurisdictions which they serve, upon approval of the State Board of Education (Va. Code Anno., §22-30 (Supp. 1972)). The district court's order requires the defendant county school boards and Boards of Supervisors to make such a request, and the State Board to approve it (338 F. Supp., at 245, Pet. A. 538). Virginia law also provides that when such a single division is created, composed of more than one political subdivision, it *must* be operated and administered just as proposed in the Richmond School Board's plan: under one school board responsible for the entire area, with one superintendent, and on a unified basis (Va. Code Anno., §22-100.1 (Supp. 1972)).

Virginia statutes specify all of the relevant mechanisms for creation and administration of the consolidated divi-

[1d] See Appendix E *infra*.

sion. The number, term, salary, and method of appointing school board members is established by Virginia law, Va. Code Anno., §§22-100.3, -.6 (Supp. 1972); Va. Code Anno., §22-100.4 (Reply 1969)). The school board is given corporate status (Va. Code Anno., §22-100.5 (Repl. 1969)) and authorized to receive title to all property formerly belonging to the school boards of the individual divisions which were consolidated (Va. Code Anno., §22-100.7 (Supp. 1972)). The district court's order directs composition of a school board and transfer of school property to the new board (338 F. Supp., at 245, Pet. A. 539).

Virginia statutes settle the most important potential financial dispute affecting the operation of a consolidated division by requiring the *pro rata* allocation of both capital and operating costs (Va. Code Anno., §22-100.9 (Supp. 1972)). The State Board of Education is given authority to promulgate such other financial regulations as may be appropriate, and to designate a fiscal officer for the combined division should the local agencies be unable to agree on a selection prior to consolidation (Va. Code Anno., §§22-100.8, -.10 (Repl. 1969)). (See 338 F. Supp., at 246, Pet. A. 538.)

In all of these respects, the district court's decree requires nothing more—or less—than compliance with Virginia's educational policy as established in its statutes.

The remaining portions of the decree (338 F. Supp., at 246-48, Pet. A. 540-45) are more typically found in federal court desegregation decrees: they require that the defendants fill in the details of the plan by making specific proposals for administrative structure, pupil and faculty assignment, transportation routes, etc. The decree also invites submission of such modifications of the Richmond School Board's plan as may be desired by the state defendants or

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the governing board of the new school division (338 F. Supp., at 246, Pet. A. 541).

The consolidated system contemplated by the Richmond School Board's Metropolitan Plan is neither unique to Virginia practice nor foreign to the experience of the defendants in the case. In addition to state officers' familiarity with public education in Virginia, the current Superintendent of Schools of Chesterfield County came to his present position after having served as a supervisor for one administrative subdivision of the Fairfax City-Fairfax County school system, which enrolls over 133,000 students (A. 481-82, 491-92).

The Court of Appeals' principal practical objections to the plan are that (1) the new division would be large (the second largest in the state), and (2) it would be funded by the governing bodies of three separate political subdivisions. (462 F.2d, at 1062, 1068, Pet. A. 566, 578.) Further matters relating to size are set forth in footnotes 67 and 100 to the body of the Brief. Fiscal dependency upon three local political jurisdictions, rather than one, (1) represents a difference only in degree, not in kind, from the more general predicament of Virginia school divisions because they all lack independent taxing authority;[2d] and (2) is apparently thought workable by Virginia lawmakers, since it characterizes the consolidated divisions for which Virginia law provides. Significantly, the new Constitution of

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[2d] Indeed, the expert witnesses who criticized the Metropolitan Plan because the new school division would be funded by three political subdivisions also expressed the view that all Virginia school divisions should be given independent taxing authority (A. 1085, 1128, 1176). One said he had not made any study to determine if financial problems of the sort he envisioned had developed in the operation of joint schools for black students, funded by two or more political jurisdictions, in Virginia (A. 1248).

Appendix D

Virginia, adopted in 1971, provides a mechanism whereby division boards and local governing bodies of political subdivisions may be required to appropriate sufficient funds as will allow school divisions to meet the minimum standards of quality in education adopted by the State Board of Education (A. 555; see note 1c, *supra*).

APPENDIX E

The History of Localism and Centralism in Virginia Educational Administration and Policy

The Court of Appeals' opinion takes the view that public education in Virginia has always been a matter of purely local concern:

> The power to operate, maintain and supervise public schools in Virginia is, and has always been, within the exclusive jurisdiction of the local school boards and not within the jurisdiction of the State Board of Education. *School Board of Prince Edward County* v. *Griffin*, 204 Va. 650, 133 S.E.2d 565 (1963). Indeed, the operation of public schools has been a matter of local option. *See Griffin* v. *School Board of Prince Edward County*, 377 U.S. 218 (1964). (462 F.2d, at 1067, Pet. A. 576.)

We here examine that conclusion in some detail, because it seems to us that the Court of Appeals attributes to Virginia a policy of individual school-division sanctity that does not exist. See also Appendix C, *supra*.

Virginia's public schools were, at the outset, entirely local in character and operation. The earliest education statute of the Commonwealth (1797) merely authorized county officials to construct and operate schools with revenues from county taxes. Not until 1869 did the Virginia Constitution and laws create "school districts" and require the establishment of a State-wide public school system. See *Board of Supervisors* v. *County School Board*, 182 Va. 266, 268-69, 275, 28 S.E.2d 698, 699, 702 (1944). At the same time, however, a policy of segregation in the public schools

was adopted and enforced on a State-wide basis (see note 25 to the body of the Brief).

The subsequent development of Virginia's educational system has been marked by increasingly larger units of administration and operation as well as the development of State institutions to regulate and standardize education.[1e] Indeed, as early as 1962, a federal district court concluded that a county's public schools were "primarily administered on a statewide basis. A large percentage of the school operating funds is received from the state. The curriculums, school textbooks, minimum teachers' salaries, and many other school procedures are governed by state law . . . ." *Allen* v. *County School Bd.*, 207 F. Supp. 349, 354 (E.D. Va. 1962).[2e]

However, the actions of Virginia officials, including state educational authorities, have made manifest the hierarchy

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[1e] In 1922 the General Assembly abolished the prior system of separate school districts congruent with magisterial (county subunit) districts following the recommendation of the State Superintendent of Public Instruction that this be done in order to eliminate "[p]urely artificial differences" among the various districts. *Annual Report of the State Superintendent, 1917-18*, at 14 (PX 124). About the same time, the legislature established the policy of "school divisions" staffed by a State official as Superintendent (whose salary was to be shared between local jurisdictions and the State). Although the State Board of Education did not exercise the authority it had prior to 1971 to place more than one "district" in a "division," it has consistently supported consolidation into larger operating units. In 1969, the Board said:

> The State Board, therefore, has favored in principle the consolidation of school divisions with the view to creating administrative units appropriate to modern educational needs. The Board regrets the trend to the contrary, pursuant to which some counties and newly formed cities have sought separate divisional status based on political boundary lines which do not necessarily conform to educational needs. (RX 82)

[2e] The current role of State authorities in Virginia is described in Appendix C *supra*.

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of values when the need to maintain segregation conflicted either with the supposed commitment to localism or with the increasingly centralist tendency of educational administration. For example, the State Board of Education did not avail itself of its authority to consolidate separate school districts into single school divisions despite avowed State policy favoring consolidation; almost without exception, the State Board joined only consenting districts at their request.[3e] On the other hand, state authorities actively endorsed and facilitated the establishment and operation of joint schools for blacks which drew their students from within several separate school districts and over distances which sometimes required the black children to board at the school during the week. (See pp. 22-23 *supra*.) With the express sanction of state authorities, county school systems before and after *Brown* sent their black resident pupils to other school divisions (including some in other States) and paid tuition for them (see pp. 23-24 *supra*).

The State showed the most blatant disregard for its supposed tradition of local public education in its reaction to the *Brown* decision. The General Assembly of Virginia restructured control of education in the Commonwealth, subjecting all phases of school operation to centralized control and direction in an effort to maintain pupil segregation; the Pupil Placement Board was established to keep control of all Virginia public education in Richmond (see pp. 19-20 *supra*). These and other devices effectively prevented any local school divisions from voluntarily undertaking desegregation in accordance with *Brown*, and restricted the elimination of segregation to those school divisions involved in federal court litigation.

[3e] See note 1e *supra*.

Appendix E

When the devices of extreme centralization represented by the school closing and pupil assignment laws (see notes 21-24, *supra*, and accompanying text) failed to prevent desegregation, Virginia accepted the inevitability of tokenism but did all within its means to minimize the amount of integration. A combination of centralist and localist policies was designed, fluctuating from time to time in whatever manner seemed to promise the most successful avoidance of *Brown*. Thus, although pupil assignment powers were returned in 1961 to local boards, criteria essentially identical to those of the Pupil Placement Board (which dealt explicitly with race) were promulgated by the State Board of Education (see note 26 *supra*). At the same time, the resources of the State were made available to school districts for the purpose of perpetuating segregation: they received assistance in designing transportation systems to serve segregated schools, legal aid in resisting desegregation litigation, and loans and grants of State funds to construct and operate additional segregated schools either within existing divisions or as joint facilities for black students (see pp. 21-23 *supra*). State officials continued to urge defiance of this Court's mandates and set the pattern by their own activities, as by holding segregated state-wide personnel meetings (A. 535).

At the local level, the new tolerance allowed local boards —coming only two years after the Governor had closed the Norfolk schools rather than allow them to open on an integrated basis (see note 22 to the body of the Brief)— was demonstrated in Prince Edward County, which was permitted to end its public school system to avoid desegregation despite a State constitutional provision requiring the establishment of a system of free public schools (see notes 27, 28 to the body of the Brief, and accompanying

text). State authorities continued to function in support of segregation ever. in Prince Edward County, however, by distributing tuition grants and scholarships (see pp. 23-24 *supra*) enabling white pupils to attend either private schools or public schools in other divisions untainted by desegregation.

State authorities again receded to a position of secondary importance, however, after passage of the Civil Rights Act of 1964 and execution of a compliance agreement between HEW and the State Education Department—taking the position that they could do nothing more than advise with local school divisions (see p. 21 *supra*).

The final chapter in this history was written in 1971, after the adoption of a new Virginia Constitution containing a provision requiring the State Board of Education to divide the Commonwealth into appropriate school divisions "subject to such criteria and conditions as the General Assembly may prescribe," Article VIII, §5. After the filing of the joinder motion in this litigation, the 1971 General Assembly of Virginia amended Va. Code Anno., §22-30 so as to prohibit the State Board of Education from placing more than one political subdivision in a single school division without the consent of school boards and governing bodies involved—aware that the enactment could have some effect on this lawsuit (see A. 942, 944).

APPENDIX F

Forces Containing Blacks Within Richmond

The containment of blacks to the City of Richmond which haracterizes the development of the greater Richmond rea is apparent from the statistics of demographic change nemselves. Since 1940, the proportion of blacks in the ounties' populations has dropped while that in Richmond as significantly grown (see Table 3, at p. 30 *supra*). Vhile the causes of this concentration may not be simple nd some small numbers of blacks may escape their effects *f.* 462 F.2d, at 1066, Pet. A. 573-574), the forces which ombine to lock blacks generally into the City are identifi-ble on this record.

It must be kept in mind that the widening differential etween City and counties has been effected in a period of apid total demographic change (see pp. 30-31 *supra*). Vhile the counties were mainly rural, with small total opulations, they were relatively blacker than they are to-ay; but it is readily apparent that as they grew after 950 (see note 135 *supra*), blacks either did not or could ot participate in the suburban expansion.

This development is hardly surprising—and was readily reseeable—in light of the historic enforced segregation f blacks *within* Richmond and the resultant patterns of xpansion. Blacks have always been confined to pre-ribed sections of the City.[1f]

[1f] Indeed, well after this Court's decision in *Buchanan* v. *Warley*, 5 U.S. 60 (1917), the City of Richmond attempted to enforce ordinance limiting blacks to established neighborhoods. See *ty of Richmond* v. *Deans*, 281 U.S. 704 (1930). Discrimination as continued after judicial invalidation of the ordinance through e use of restrictive covenants and the practices of the real estate dustry. (See, *e.g.*, A. 497-98; pp. 33-34 *supra*.)

These were smaller in the past; they now have expanded under the pressure of a rising black population; but there are still areas of the City effectively restricted to whites (21 R. 32). The manner of expansion of black residential areas was established by these same discriminatory customs, however: always on the periphery of the ghetto rather than by colonizing new areas (see 338 F. Supp., at 73, Pet. A. 172 [reference to RX 18 at 1970 trial]). Prior to 1950, then, Richmond was characterized by a continually expanding black central ghetto and expanding white belts surrounding it (A. 666). See generally, K. & A. Taeuber, Negroes in Cities (1965).

What we have referred to as the process of suburbanization after 1950 is nothing more than the continuation of this pattern, now across invisible political boundary lines. The continuation of rampant discrimination against blacks in suburban housing is apparent from the figures, supported by the testimony, and accepted by the Court of Appeals (462 F.2d at 1065, Pet. A. 572). In the context of the historic cycle of racial residential transition in the City, this was enough to contain blacks to Richmond.

New mechanisms were now available, however. As the income gap between blacks and whites—itself a reflection of past educational deprivations in segregated school systems and continuing employment discrimination (see, *e.g.*, A. 186; PX 104-107e, 125)—widened, restricting the access of the poor to suburban housing generally meant restricting blacks (see note 158 *supra*). The Court of Appeals accepts the notion that the counties' refusal to permit low-income housing has contributed to the segregated pattern between City and suburbs.[2f] (462 F.2d, at 1066, Pet. A.

[2f] Although the Court of Appeals supposes "the possibility that in a heavily white county much of such housing would likely be

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Appendix F

.) Economic differences also combine with the lack of blic transportation available in suburban counties de-ndent upon automobile travel, to restrict access of the or (see A. 885-86).[3f]

These patterns of housing and economic discrimination uld, whether governmentally compelled or not, prevent ort to the use of political jurisdiction boundaries to ine school attendance areas if the greater Richmond ion were a single school division. *Brewer* v. *School Bd. Norfolk*, 397 F.2d 37, 41 (4th Cir. 1968); *Swann* v. *rlotte-Mecklenburg Bd. of Educ.*, 431 F.2d 138 (4th . 1970), *rev'd on other grounds*, 402 U.S. 1 (1971). Yet Court of Appeals seems to have held them irrelevant e because Virginia has divided the greater Richmond a among three school units. (See 462 F.2d, at 1066, Pet. 574.) Thus, the Court of Appeals' peculiar view of the th Amendment seems to control this issue as well.

Not only have the forms of discrimination affecting adult groes described above played a substantial role in con-ng blacks to the City of Richmond, but the very tech-ues utilized by the school authorities of the three divi-ns since 1954 to perpetuate segregation have, by their ritable effect upon residential demography, contributed hat phenomenon:

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pied by low income whites," 462 F.2d at 1066, Pet. A. 574, e are relatively few low income families in the counties now note 158 *supra*) while nearly all public housing units within mond are occupied by black tenants (PX 39, 129; A. 614).

In 1969, 18% of all employees living and working in the mond SMSA travelled to work by public transportation—but of black employees did so. U.S. DEPT. OF COMMERCE, BUREAU HE CENSUS, CENSUS OF POPULATION: 1970, Detailed Character-s (G.P.O. PC (1)-48, 1972), pp. 1026-28, Table 190, Place of k During the Census Week, by Selected Characteristics: 1970.

Appendix F

We have described the development of the greater Richmond area's white suburbs as but an extension, across political boundary lines, of the process by which black neighborhoods have always expanded. In this context, the repeated conversion of formerly white Richmond school facilities to identifiably black ones, together with the extensive construction of new white schools in the counties,[f] operates to exacerbate the general demographic trend toward a black City surrounded by white counties. Indeed, the process is the analogy of that described by this Court in *Swann*, 402 U.S., at 20-21, whereby white city schools likely to become desegregated were closed [here converted to black schools] while new white suburban schools were constructed. See *Clark* v. *Board of Educ. of Little Rock*, 426 F.2d 1035 (8th Cir. 1970), *cert. denied*, 402 U.S. 952 (1971).

---

[f] Contrary to the Court of Appeals' supposition that the counties' maintenance of segregated schools long after *Brown* could not have affected the residential mobility of blacks (462 F.2d, at 1066, Pet. A. 574), the county school systems did offer disincentives to black settlement in the newly urbanized areas of Henrico and Chesterfield adjacent to Richmond. Blacks who might have been able to defeat the attempts to bar them and have moved to these areas knew their children could not attend the schools located where they lived. Black students were assigned to small, often inferior and overcrowded facilities (see pp. 13-15 *supra*) and might be required to travel for an hour and a half or two hours to get to such distant schools (see note 100 to the body of the brief).

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Supreme Court of the United States

October Term, 1972

No. 72-549

THE SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,
Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONERS

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October Term, 1972

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N WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

he opinions of the United States Court of Appeals for Fourth Circuit are reported at 462 F.2d 1058 and are inted at pp. 557-602 of the Appendix to the Petition Writ of Certiorari seeking review of the judgment filed is Court by Petitioners, the School Board of the City

of Richmond, *et al.*[1] The opinion and order of the United States District Court for the Eastern District of Virginia dated January 5 and 10, 1972, respectively, and reversed by the court of appeals, are reported at 338 F.Supp. 67 and are reprinted at Pet. A. 164-545.

Other related opinions and orders of the courts below are reported or reprinted as follows:

1. Opinion and order dated August 17, 1970, reported at 317 F.Supp. 555 (directing implementation of interim plan of desegregation in Richmond system for September, 1970) (Pet. A. 1).

2. Opinion and order dated December 5, 1970, reported at 51 F.R.D. 139 (directing joinder of various State and County defendants) (Pet. A. 48).

3. Opinion dated January 8, 1971, reported at 324 F. Supp. 439 (denying recusal motions submitted by County defendants) (Pet. A. 58).

4. Order filed January 13, 1971, *nunc pro tunc*, January 8, 1971, unreported (disposing of various pretrial motions, etc.) (Pet. A. 91).

5. Opinion and order dated January 13, 1971, unreported (disposing of various pre-trial motions) (Pet. A. 94).

6. Opinion and order dated February 10, 1971, opinion

[1] A separate appendix containing all relevant opinions and orders below as well as pertinent state constitutional and statutory provisions was filed by the Richmond School Board with its Petition for Writ of Certiorari on October 4, 1972, and all references in this brief to opinions and orders below or to the state provisions will be in the following form: "Pet. A.—". All other matters excepting trial exhibits are printed in separate appendix volumes and will be referred to as "A.—." The appendix volume containing only trial exhibits will be referred to as "Ex. A.—." The various exhibits of each party will be designated as follows: Richmond School Board—"RX——"; Plaintiffs—"PX——"; Chesterfield and Henrico County defendants—"CX——", and "HX——," respectively.

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eported at 324 F.Supp. 396 (denying three judge court) Pet. A. 98).

7. Opinion and order dated February 10, 1971, opinion eported at 324 F.Supp. 401 (denying motion to drop addi-onal parties in individual capacities) (Pet. A. 107).

8. Opinion and order dated April 5, 1971, reported at 25 F. Supp. 828 (directing implementation of desegregation an III in Richmond system for 1971-72 school year) (Pet. 110).

9. Opinion and order dated July 20, 1971, unreported lenying motion to convene three judge court) (Pet. A. 6).

10. Order dated September 15, 1971, unreported (deny-g motion to limit evidence) (Pet. A. 163).

11. Opinion and order dated January 19, 1972, unre-rted (denying stay of January 10, 1972 order) (Pet. A. 6).

12. Order of court of appeals granting partial stay dated bruary 8, 1972, reported at 456 F.2d 6 (Pet. A. 553).

13. The amended judgment of the court of appeals, en-ed August 14, 1972, appears at Pet. A. 603.

Other proceedings in this case are reported as follows: adley v. *School Board of City of Richmond*, 317 F.2d 429 h Cir. 1963); 345 F.2d 310 (4th Cir.), *rev'd and re-nded*, 382 U.S. 103 (1965); 324 F. Supp. 456 (E.D. 1971).

JURISDICTION

The opinion and judgment of the court of appeals was d on June 5, 1972, and its amended judgment was filed August 14, 1972. The jurisdiction of this Court is in-

voked pursuant to 28 U.S.C. § 1254(1). By an order dated August 12, 1972, Mr. Justice Douglas granted an extension of time to file the petition for a writ of certiorari from September 5, 1972, to and including October 5, 1972. The petition for a writ of certiorari was filed in this Court on October 4, 1972, and was granted on January 15, 1973.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the tenth amendment to the Constitution of the United States, which reads as follows:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

This matter also involves the equal protection clause of the fourteenth amendment to the Constitution of the United States, which provides as follows:

> . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

Various provisions of Virginia's 1902 and 1971 constitutions and statutes relating to education which are also relevant to this matter are set out at Pet. A. 604-23: constitution of 1902, §§ 129, 130, 132, 133; constitution of 1971, art. VIII, §§ 1-7; Va. Code Ann. §§ 22-1, -2, -7, -30, -34, -100.1 through -100.12 (Repl. Vol. 1969); Va. Code Ann. §§ 22-1.1, -2, -7, -21.2, -30, -32, -100.1, -100.3 through -100.11, -126.1, -127 (Cum. Supp. 1972).

QUESTIONS PRESENTED

1. Under what circumstances the remedial powers of a district court may be limited by existing school division boundaries.

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2. The extent to which the effectiveness of relief in de jure metropolitan communities may be dependent upon the manner in which a state may choose to align its local school divisions.

3. Whether, in the formulation of effective relief, district courts are permitted to utilize means coextensive with those used by school authorities in the past to establish and perpetuate a statewide system of dual schools.

STATEMENT

1. Introduction

This Court has granted review of an en banc[2] decision of the United States Court of Appeals for the Fourth Circuit reversing the judgment and order of District Judge Robert R. Merhige, Jr., of the Eastern District of Virginia, which had directed the implementation of a desegregation plan encompassing three Richmond metropolitan area school divisions. The district court had ordered the consolidation of the Henrico and Chesterfield County school divisions with the school division of the City of Richmond, substantially in accordance with existing provisions of state law, as "a first, reasonable and feasible step toward the eradication of the effects of the past unlawful discrimination" practiced by the state and local school authorities involved (Pet. A. 239). In the majority opinion written by Judge Craven, however, five members of the court of appeals concluded that the district judge had exceeded his authority in that, regardless of the relative effectiveness of alternative desegregation plans presented, the remedial

[2] As was indicated when the case first came to the court of appeals on motions for a stay of the district court's order (Pet. A. 553-56), Judge Butzner disqualified himself pursuant to 28 U.S.C. § 47 since, as a United States district judge, he had presided over the case from 1962 to 1967 (Pet. A. 554).

power of a district court could not extend beyond existing school division lines absent findings of discriminatory purpose or motivation in the establishment or maintenance of such lines[3] or of joint interaction by any two of the three school divisions involved for the purpose of keeping one system relatively white by confining blacks to another[4] (Pet. A. 562, 572). Judge Winter, however, viewed the lower court's decree as embodying the only relief permissible under the fourteenth amendment and would have affirmed (Pet. A. 586).

2. Proceedings Below

This case is an outgrowth of the Richmond school desegregation suit originally filed by black parents and students in 1961, pursuant to 28 U.S.C. § 1343, 42 U.S.C. § 1983, and section 1 of the fourteenth amendment of the Constitution of the United States[5] (A. 59-69). The current phase of

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[3] As discussed at pp. 97-100 *infra*, the district court did, in fact, make such findings to which the court of appeals apparently assigned no importance.

[4] In reaching this conclusion, the court of appeals failed to find as clearly erroneous under Rule 52(a), Fed. R. Civ. P. any of what the district court had viewed as operative facts established by largely uncontradicted evidence, but in some instances substituted its conclusions as to the inferences to be drawn therefrom. This action on the part of the appellate court is discussed more fully at pp. 104-09 *infra*.

[5] The case was first tried during 1962 at which time the plaintiffs sought transfers of pupils from Negro public schools to white public schools and, on behalf of all persons similarly situated, an injunction restraining the Richmond School Board from operating racially segregated schools. The district court approved the individual transfers but refused to grant further injunctive relief and the plaintiffs appealed. The court of appeals reversed the order in part, holding that plaintiffs' class were entitled to an injunction restraining the Richmond School Board from maintaining a discriminatory "feeder" system which in effect had perpetuated segregated schools. (317 F.2d 429 [1963]). Again, in 1965, the court of appeals upheld a district court order approving what was in effect a limited freedom of choice plan. (345 F.2d 310 [1965]). This Court, however, vacated the order of the court of appeals and remanded the case for consideration of

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the litigation began in March of 1970 when the plaintiffs, relying upon decision which this Court had rendered nearly two years previously,[6] again sought the desegregation of the Richmond public school system.

Pursuant to the plaintiffs' motion, a series of hearings was conducted during June and August of 1970 by District Judge Robert R. Merhige, Jr., who entered his initial judgment (317 F. Supp. 555; Pet. A. 1) finding that the Richmond system was still illegally segregated under freedom of choice in that the various facilities were as to student population and staffs readily identifiable as either black or white schools[7] (Pet. A. 7-8). Even though the plan submitted by the Richmond School Board at this time was found to be deficient in certain respects,[8] Judge Merhige nevertheless accepted it as an interim measure for the 1970-71 school year while at the same time requiring the School Board to come forward with another plan at a later date[9] (Pet. A. 38-41).

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allegations relating to discriminatory faculty allocations, specifically noting that more than a decade had passed since its decision in *Brown v. Board of Education*, 349 U.S. 294 (1955) [hereinafter cited as *Brown II*], and that delays in desegregation of school systems could no longer be tolerated (382 U.S. 103, 105 [1965]). During the school years 1966-67 through 1969-70, the schools in the City of Richmond were operated under a freedom of choice plan pursuant to a consent decree entered by the district court in March of 1966.

[6] Green v. County School Bd., 391 U.S. 430 (1968); Monroe v. Board of Comm'rs., 391 U.S. 450 (1968); Raney v. Board of Educ., 391 U.S. 443 (1968).

[7] In his opinion, Judge Merhige made extensive findings regarding the existence and effects of de jure segregation within the City of Richmond alone (Pet. A. 8-13).

[8] See p. 37 *infra*, noting the district court's dissatisfaction with the degree of segregation remaining in the City's elementary schools under the Richmond Board's plan.

[9] The Richmond public schools were operated under the "Interim Plan" for the duration of the 1970-71 school year in that the district court on January 29, 1971, declined to order any further relief in the middle of the school year. 324 F. Supp. 456.

With the implementation of the "Interim Plan" in September, 1970, however, the City school system experienced a 300 per cent increase in the normal rate of attrition of its white students. Stating that complete and effective relief could not be provided within the City alone, the Richmond School Board on November 4, 1970, filed a motion under Rule 19, Fed. R. Civ. P. to compel the joinder of parties needed for a just adjudication with a view of presenting a plan of desegregation which would encompass the major portion of the Richmond metropolitan area[10] (A. 90-97). Hearings were conducted regarding this new aspect of the case following which the district court on December 5, 1970, granted the Richmond School Board's motion and directed the plaintiffs to file an amended complaint[11] (51 F.R.D. 139; Pet. A. 48).

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[10] Dr. Thomas C. Little, Associate Superintendent of the Richmond Public Schools, as early as June 25, 1970, had testified on cross examination that the solution to the problem would involve an area larger than the City school division:

> Q. Dr. Little, assuming transportation of pupils, is there any way to achieve what you consider to be, as an educator, an optimum of desegregation in the Richmond area? A. In the Richmond area, yes.
>
> Q. How would you do that? A. It would involve the involvement of a larger area than the present city boundaries of the City of Richmond.
>
> Q. Are you talking about Henrico County, Chesterfield County, or both? A. Henrico County, Chesterfield County, and the possibility of the general metropolitan area, maybe bordering on, in other counties other than Henrico and Chesterfield. Basically, the problem could be solved within the City of Richmond, Henrico and Chesterfield Counties.

[6/25/70 Tr. 1122-23].

[11] In noting the objections of the additional defendants to the effect that their joinder was unnecessary in view of earlier findings regarding the sufficiency of a desegregation plan confined to the City, the district court stated that such a determination was

> . . . made in the context of litigation between Richmond residents and Richmond officials alone. It is by no means inconsistent with

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This the plaintiffs accomplished on December 14, 1970, by filing an amended complaint wherein certain portions of the original complaint as initially filed in 1961 and amended in 1962, including the basis for federal jurisdiction in the matter as previously noted at p. 6 *supra,* were specifically realleged (A. 99-109). The prayer was stated in the alternative, as the plaintiffs requested relief through either

> the consolidation or merger of the defendant school systems . . . [or]
>
> . . . that the Court require [the] defendants . . . to enter into such agreements, contracts or otherwise to provide for the joint operation of the educational systems of the [three divisions], with free availability of all facilities for pupil attendance, and tri-system-wide assignment of pupils . . . .

(A. 107-08).

Numerous motions, hearings and district court orders intervened prior to the trial of the matter which did not

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the existence of a duty on the part of officials with broader powers, to exercise such powers to afford different or additional relief from what the Court has found to be State imposed segregation. The addition of further parties, moreover, alters the range of alternatives, some of which may be shown as feasible and more promising in their effectiveness. *Green v. County School Board of New Kent County* [citation omitted]. It is with an eye to this range of choices between means to provide desegregated schools that the legal sufficiency of a proposed unitary plan is to be tested.

(Pet. A. 50-51).

The specific defendants eventually joined under the district court's order and the plaintiffs' amended complaint were as follows: The Virginia State Board of Education and the individual members thereof; the State Superintendent of Public Instruction; the School Boards of the Counties of Chesterfield and Henrico and the individual members thereof; the Division Superintendents of schools of Chesterfield and Henrico Counties; and the Boards of Supervisors of the Counties of Chesterfield and Henrico and the individual members thereof (A. 55-56). These parties collectively will be referred to as the "State and County defendants."

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commence until mid-August of 1971.[12] Evidence was received in the lower court on August 16-20, 23-27, 31 and September 1-2, 7-10 and 13, 1971.[13]

Even though the metropolitan phase of the case had been substantially advanced, the Richmond School Board still was under an outstanding order of the district court to come forward with an additional desegregation plan limited to the City schools for the 1971-72 school year.[14] On April 5, 1971, Judge Merhige ordered the Richmond Board to implement its "Plan III" for the 1971-72 school year within the City (325 F. Supp. 828; Pet. A. 110). Since the metro-

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[12] On January 4, 1971, the County defendants filed a motion for recusal and joined with the State defendants in moving for a dismissal of the amended complaint. At the January 8, 1971 hearings on these motions, at which time Judge Merhige delivered his opinion denying the recusal motion (324 F. Supp. 439; Pet. A. 58), the State and County defendants submitted a number of additional motions. On January 13, 1971, the district court issued orders disposing of many of these pre-trial motions and directing the State and County defendants to answer the amended complaint (Pet. A. 91; 94). All defendants submitted answers to the amended complaint on January 15, 1971, and the Richmond School Board in conjunction with its answer filed a cross-claim reasserting allegations made in its motion for joinder and specifically requesting relief in the form of consolidation of the Richmond, Chesterfield and Henrico school divisions. On February 10, 1971, the district court entered its memorandum opinions and orders denying State and County motions for a three judge court and for the dropping of parties in their individual capacities (324 F.Supp. 396, 401; Pet. A. 98; 107). Other pre-trial motions submitted by the State and County defendants were subsequently disposed of by Judge Merhige on July 20 and September 15, 1971 (Pet. A. 156; 163).

[13] At the conclusion of the presentation of its evidence, the Richmond School Board on August 26, 1971, filed a motion for leave to amend its answer and cross-claim (A. 721-26) which was subsequently granted under the terms of the district court's final decree (Pet. A. 536).

[14] Pursuant to a report submitted to the district court in November of 1970, the Richmond School Board on January 15, 1971, filed alternative plans for the additional desegregation of the City schools for the coming school year. Hearings on the proposals were conducted in the lower court on March 4, 1971.

olitan phase of the case was then pending, the district ourt was careful to note that its decision was "based upon e assumption that the city will [in 1971-72] operate as it as heretofore, as a single administrative unit for school urposes" (Pet. A. 110) (footnote omitted). Judge Merhige rther noted that his conclusions were made entirely with- ut consideration of the issues involving the State and ounty defendants previously joined in the metropolitan hase of the case (Pet. A. 110 n. 1), and cautioned that his pproval of the Richmond plan was conditioned upon its timate effectiveness as "[t]he Constitution is satisfied only hen an integration plan 'works' in practice and not merely n paper"[15] (Pet. A. 148-49) (citation omitted).

Concurrently with the trial of the issues involving the etropolitan relief, the Richmond School Board was open- g its schools under "Plan III." Once again in September, 971, attendance data established a substantial acceleration white attrition within the Richmond system in that of e approximately 17,500 white students anticipated to en- ll, only 13,260 actually were in attendance. The Septem- er, 1971, enrollment data available to the district judge rior to his ruling in the instant case indicated that many Richmond's schools, particularly those which traditionally ad been all-black schools, opened with proportionately

[15] At the time of the district court's action in April of 1971, it had ly projections for student attendance upon which to base its judg- ent regarding the ultimate effectiveness of "Plan III" in eliminating e racial identifiability of City schools. As the court said in approving e plan:

> A comparison of the projected racial attendance figures for each school with the systemwide ratio reveals that . . . the School Board, *if this proposal succeeds as planned,* will have eliminated the racial identifiability of each facility to the extent feasible within the City of Richmond. . . .

Pet. A. 121) (emphasis added).

greater black enrollments than had been projected[16] (RX-98; Ex. A. 155).

On January 10, 1972, Judge Merhige issued his opinion (338 F.Supp. 67; Pet. A. 164-536) and filed his order (Pet. A. 536) directing the September, 1972 implementation of the Richmond School Board's metropolitan desegregation plan which embodied the consolidation of the school divisions of Richmond, Henrico and Chesterfield substantially in accordance with provisions of State law.[17] The district court based its order on extensive findings of discriminatory practices including the following illustrative determinations that:

(1) "the 'desegregation' of schools within the city and the counties separately [was] pathetically incomplete" and that "[n]ot only [was] the elimination of racially identifiable facilities impossible of attainment, but the partial efforts taken contain[ed] the seeds of their own frustration" (Pet. A. 237);

(2) State and local officials had "by their actions directly contributed to the continuing existence of the dual school system which now exists in the metropolitan area of Richmond" (Pet. A. 379);

(3) "desegregation of the schools of the city and the counties as well cannot now be achieved within the current school division bounds" owing in substantial part to the deliberate deferral by the state and local authorities of plaintiffs' constitutional rights (Pet. A. 207);

(4) the minmum size school district required "to eliminate the effect of state-imposed segregation, would be that of the division created by the merger of the

[16] The effect of this disparity between projected and actual attendance of students in the Richmond system is illustrated more graphically at pp. 23-25 *infra*.

[17] These provisions are discussed at note 51 *infra*.

systems of Richmond, Henrico and Chesterfield" (Pet. A. 434);

5) "[t]he school division lines here . . . have never been obstacles for the travel of pupils under various schemes, some of them centrally administered, some of them overtly intended to promote the dual system" (Pet. A. 193);

6) "[t]he existing [political subdivision lines] have no relation to natural obstacles or substantial governmental interests, but they are related to strict housing segregation patterns, maintained by public and private enforcement and owing their genesis in substantial part to the manner in which the three school divisions have been operated and expanded. Thus by the maintenance of existing school division lines the State advantages itself of private enforcement of discrimination and prolongs the effects of discriminatory acts of its own agents" (Pet. A. 195-96);

7) "[t]he proof here overwhelmingly establishes that the school division lines between Richmond and the counties here coincide with no natural obstacles to speak of and do in fact work to confine blacks on a consistent, wholesale basis within the city, where they reside in segregated neighborhoods" (Pet. A. 196); and

8) regarding the school construction policies of the three school divisions, "[t]he longer term impact of [these policies] has been the exaggeration of the racial disproportion between the city and the two neighboring counties. This has come about by virture of the maintenance of school division lines as obstacles to pupil assignment for purposes of desegregation while the area's housing patterns, when its population grew, became increasingly segregated. The continued operation of the schools of each subdivision as racially identifiable facilities moreover necessarily caused each new school and

> old ones as well to take on the label of a black or white school." This process led to the racial identifiability of the entire systems in issue, with the Richmond system being identifiable as a black one, and that of each county perceivably a white system (Pet. A. 200-01).

Motions for a stay of the district court's order were sought in that court and denied by Judge Merhige on January 19, 1972 (Pet. A. 546). Enlarged applications for a stay[18] were renewed in the court of appeals on January 25, 1972, and that court by order dated February 8, 1972, granted a partial stay of Judge Merhige's order pending its disposition of the case on an expedited appeal (456 F.2d 6; Pet. A. 553). Under the terms of the partial stay issued by the court of appeals, the State defendants were required to direct and coordinate planning for the operation and financing of the merger of the Richmond, Chesterfield and Henrico school divisions as contemplated in the district court's order (Pet. A. 553). Planning for the implementation of that order thus was conducted at the State level for at least the four month period from early February, 1972, until the time of the decision of the appellate court.

Following arguments before the court of appeals on April 13, 1972, that court, on June 5, 1972, filed its opinion and judgment reversing the district court's order (462 F.2d 1058; Pet. A. 557), Judge Winter dissenting (Pet. A. 585).[19] The amended judgment of the court of appeals was entered on August 14, 1972 (Pet. A. 603).

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[18] These applications on behalf of the State and County defendants contained the first intimations that those parties apparently preferred, as an alternative to the consolidation ordered by the district court, a method of assignment based on an exchange of pupils between the three subsisting school divisions (A. 1346-48). See note 49 *infra* and accompanying text.

[19] The opinions of the court of appeals are discussed at pp. 92-115 *infra*.

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3. Characteristics of the Richmond Metropolitan Area

A.
Geography, Demographic Patterns And General Interdependence

The City of Richmond, along with the Counties of Henrico and Chesterfield form the major part of the Richmond Standard Metropolitan Statistical Area.[20] The City of Richmond (63 square miles) occupies the approximate geographical center of the region, while the Counties of Henrico (244 square miles) and Chesterfield (445 square miles) completely surround and are contiguous with the City at all points. There are no distinct geographical features or man-made barriers[21] which separate the City from either Henrico or Chesterfield (A. 151-52; Pet. A. 401-02, 195).

The Richmond, Henrico and Chesterfield metropolitan area covers a total of 752 square miles, and according to

[20] As of 1963, the Census Bureau included Hanover County as a part of the Richmond SMSA, which is thus currently composed of the four political subdivisions. At no point is Hanover County contiguous with the City of Richmond, and the substantial part of the County is largely rural in nature. Approximately 9,600 students, 78 per cent of whom are white, attend schools in the Hanover system which number is relatively small in comparison to the enrollments in the other three political subdivisions in the Richmond SMSA. In 1967, consultants commissioned by Henrico and Chesterfield to study the Richmond area noted the substantially lesser degree of interdependency between Hanover and the other three components of the Richmond SMSA (HX-25; II-1 n. 1; A. 834; Ex. A. 41).

[21] The boundary line separating the City of Richmond and Henrico County, last changed pursuant to a 1942 annexation (CX-2 [map]; A. 878), was characterized in a 1959 report by an independent consultant studying the Richmond region as "so irregular and complex that it often confuses even veteran service personnel of both jurisdictions" (RX-89, IV-2; A. 821-22).

The same consultant's 1959 conclusions regarding a more clearly defined boundary as between the City and Chesterfield County are no longer valid since, pursuant to a 1970 annexation, the new Richmond-Chesterfield line now conforms to no significant features or barriers and thus is similarly indistinct (A. 151).

the 1970 Census contains a total of 480,840 persons. Richmond's population totaled 249,621 while the totals for Henrico and Chesterfield were 154,364 and 76,855, respectively (Pet. A. 401-02). The great majority of Henrico and Chesterfield citizens live in the urban-suburban portions of the respective Counties most closely contiguous with the City of Richmond and are easily within thirty minutes travel of the heart of downtown Richmond, using regular streets and observing applicable speed limits (A. 154-56; RX-60; Ex. A. 13).

The district court found that there is a substantial community of interest and general interdependence between citizens in Richmond, Henrico and Chesterfield as demonstrated by such indices as area-wide employment, retail sales, commuter traffic patterns and inter-jurisdictional utility services. Recreational, educational, cultural, transportation and hospital facilities used by the metropolitan population are concentrated largely within the City of Richmond. The City is the central economic element in the region as it is the major place of employment, the center of commerce, as well as the situs of the majority of area manufacturing activity and retail sales (Pet. A. 402-16).

Prior to the 1970 annexation of a portion of Chesterfield County by the City of Richmond,[22] over 75 per cent of the jobs (covered by the State's unemployment program) in the tri-jurisdictional area were in Richmond (A. 159-60, 162; RX-54, 54A; Ex. A. 1-3; Pet. A. 402). The 1967 census data, the most recent available at the time of the proceedings below, indicated that Richmond contributed 76 per cent of the value added by manufacturing in the region (A. 162-63;

[22] As of January 1, 1970, an area of approximately 23 square miles of Chesterfield containing over 47,000 persons, 97 per cent of whom were white was awarded to Richmond pursuant to an annexation decree (A. 878; Pet. A. 411).

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X-54, 54A; Ex. A. 1-2; Pet. A. 402), and that in 1970 re- sales, Richmond accounted for 62.5 per cent of the area's siness (A. 163; RX-54, 54A; Ex. A. 1-2). Further data licated that a substantial percentage of employed Chester- d and Henrico residents come into the City to work.[23] (A. 0-61; RX-56, 56A; Ex. A. 5-6).

Evidence introduced at the trial below further indicated substantial degree to which all major public and semi- blic facilities of a recreational, educational and cultural iety are located within Richmond (A. 163-65; RX-59; A. 9-12). Of the hospitals serving the area, 17 of 18 are Richmond (RX-59; Ex. A. 9-12), and data compiled the years 1965-1969 demonstrated that most area resi- nts are born in and die within city facilities (A. 165; X-61, 61A; Ex. A. 15-16).

The division of the community by three political jurisdic- ns has not altered the mutual interdependence which per- s in various protective and utility services. Since Hen- o County's principal offices are located within the City, hus relies upon Richmond's fire and police departments service (A. 805-06), and a reciprocal fire protection as- ance agreement presently exists between Richmond and

[23] Even though the 1970 census data on employment and place of dence was not available at the time of the trial, 1968 information Chesterfield showed that prior to the 1970 annexation, approxi- ely 48 per cent of Chesterfield workers had jobs within the City, e 1963 data on Henrico demonstrated that 66 per cent of Henrico kers came into Richmond to work (A. 160-61; RX-56, 56A; Ex. 5-6). Additional evidence introduced at the trial, however, showed in two selected employments the respective percentages in were equally significant. Of all attorneys listed in the 1970 Greater mond Telephone Directory, over 90 per cent had their offices in the City; of the number working in Richmond, 42 per cent d in the two Counties, 51.4 per cent resided in Richmond and per cent elsewhere (A. 161). Approximately a third of the loyees of the State Department of Education which is head- rtered in Richmond lived in each of the three jurisdictions (A.).

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Chesterfield (A. 877). Richmond and Henrico have entered into numerous contracts concerning the provision by the City of water and sewerage treatment facilities (A. 187-91; Pet. A. 414-15), and similar reciprocal compacts have been made by Richmond and Chesterfield (A. 191-94).

The conclusions reached by the district court regarding the marked interdependence and community of interest between the three jurisdictions were substantially identical to those reached by separate independent consultants who have studied the region over the past 14 years (Pet. A. 402-05).

Financed by the Richmond Regional Planning Commission, the Public Administration Service Report of 1959 included: (1) findings that the area's residents shared a common heritage and had common interests; (2) comments concerning the disadvantages in the operation of each of the school systems on a separate basis and the need for unified management of the region's public education;[24] and (3) proposals that governmental consolidation be effected between Richmond and Henrico through a recommendation that "Henrico County and Richmond City combine their governments for the common and mutual benefit of the citizens of both" [25] (RX-89, IV-3; A. 820-22).

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[24] With regard to the existence of the three separate school systems in the Richmond region, the consultants concluded:

> With each school operation going its separate way, optimum efficiency in management and best planning, location, and utilization of the expensive school plants are difficult, if not impossible of achievement. Whatever may be the outcome of the current controversy over public education in Virginia, it does not seem likely that it will result in the scrapping of the $60 million school plant that now exists in the Region, or in the discontinuance of its expansion and its need for unified management.

(RX-89, II-25; Ex. A. 34-35).

[25] Such a consolidation, of course, necessarily would have included the school systems of the two jurisdictions.

A report prepared in 1967 at the request of the Boards of Supervisors of Henrico and Chesterfield by Space Utilization Associates likewise incorporated a recognition by independent consultants of the need for solution of local problems on an area-wide basis through the elimination of many of the jurisdictional limitations imposed by the existing governmental structure in the area (RX-47; A. 825-26; HX-25; A. 834; Ex. A. 36, 41; Pet. A. 404-05).

The initial version of this report[26] contained the following observations:

> The central city is an essential element of the region as the major place of employment, the center of commerce, and the State Capital and consequently its problems affect the entire region. The other jurisdictions cannot dictate the affairs of the central city nor can they refuse to cooperate in the solution of its problems. . . . .
>
> * * *
>
> The jurisdictional boundaries of the three jurisdictions do not necessarily coincide with the living patterns of area residents or natural service areas. Many of the problems associated with urban areas cross over artificial boundaries and cooperative action or multijurisdictional programs must be mounted to cope with crime, disease, pollution, etc. Jurisdictional boundaries are not inviolate and should be changeable when warranted . . . .

(RX-47, IV-1; Ex. A. 37, 38). A recommendation concerning the ultimate solution for future government in the Richmond area was expressed in the following terms:

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[26] Certain portions of the report originally submitted by the consultants on June 1, 1967 (RX-47; Ex. A. 36), were not well-received by the County Boards of Supervisors who commissioned it (Pet. A. 404). Accordingly, certain passages were deleted and a later version dated June 12, 1967 (HX-25; Ex. A. 41), was submitted to the County Boards (Pet. A. 404).

> It is the Consultant's opinion that consolidation would be the "idealized" solution for the Richmond region, but that, without a change in attitudes or a crisis of major proportions, it would not receive the necessary voter approval.

(RX-47, V-5; Ex. A. 39).

Although the "idealized" solution through consolidation was excluded in the report which finally met with the approval of the County Boards of Supervisors, the later version (June 12th edition) nevertheless contained significant observations regarding indices such as the social and economic disparities between Richmond and the two Counties.[27]

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[27] In describing conditions in the Richmond region, the consultants rendered opinions as to the future situation if certain remedial actions were not taken:

> Much more must be done in education, from pre-school through high school education and vocational training. All officials and all levels of government must participate in the improvement of education for the Negroes and in developing employment opportunities that permit growth and full utilization of aspirations, education, and abilities.
>
> A continually growing concentration of the Negroes without improvements in housing, education, and opportunities will further increase the disparities between the central city and the suburbs, making cooperative regional action more difficult in eradicating the disparities.
>
> Henrico does not have a high percentage of low income families. The percentage of non-whites in the population is lower than the national average and lower than any other jurisdiction in the SMSA. In contrast to all other jurisdictions in the region, the number of non-whites in Henrico decreased between 1950 and 1960. If current trends continue, there seems little likelihood of any significant social or economic disparities between economic or racial groups within the County.
>
> Chesterfield has a very low percentage of lower income groups, though the percentage has been increasing. Due to the recent development of the County, most of the dwelling units are relatively new. There are few low rent facilities. For this reason, no significant change is anticipated in the number of low income families. For the same reason, the percentage of non-whites in the County is expected to remain almost constant.

(HX-25, III-2, 4, 5; Ex. A. 47-48).

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Examining measures of "social distance" extant in the Richmond metropolitan area, the consultants observed:

> . . . as the percentage of non-whites in the core city *increases*, the possibility of effective cooperation to solve metropolitan problems diminish [*sic*]. In city-suburban racial imbalance and other measures of social distance, the Richmond area is worse off (the social distance between city and suburb is greater) than most other metropolitan areas in the State of Virginia, the southern region, and the United States as a whole.

Let us look at some measures of social distance.

A. *Percentage of Non-Whites*

In 1960, 42 percent of the City's population was non-white. This was by far the highest non-white percentage among Virginia's SMSA's; it is almost three times the median figure for metropolitan areas in the United States; and it is almost twice the median figure for the Southern region.

In contrast, the 1960 percentage of non-whites in the counties surrounding Richmond was only 10.4 percent. This figure was lower than the Southern regional figures. It was also 39 percent lower than that of the figure for the City of Richmond.

And there is every reason to believe that life in the Richmond metropolitan area is becoming *more* segregated with time, rather than less segregated. By that we mean non-white populations are continuing to be concentrated in the City of Richmond, and the small non-white percentages in Henrico and Chesterfield counties are likely to become even smaller with time as the white population in these counties continues to expand. At the present time there is little reason to believe that the State of Virginia or the U. S. Government is likely to adopt legislation, such as a "fair housing act", which would significantly alter this pattern of concentrating Negro housing in central cities and white housing in suburbs.

B. *Education*

The median education level in the City of Richmond in 1960 was 10.1 years. This figure, which increased only 0.2 years in the decade 1950-1960, was *lower* than every other Virginia SMSA except Lynchburg, was lower than the U.S. SMSA median and, more importantly, was lower than comparable levels for SMSAs in the Southern region.

In contrast, the median education level in Henrico and Chesterfield was 12.2 years in 1960. This level was the highest of the State's SMSAs, higher than the U.S. SMSA median, higher than the median level in the Southern SMSAs, and most importantly, was 2.1 years higher than the City of

The percentage of the total black population in the Richmond metropolitan area remained stable over the 30-year period from 1940 (28 per cent) to 1970 (26 per cent). In 1970, however, approximately 84 percent of the metropolitan black population was confined within the City of Richmond. During the respective periods of greatest growth in the Counties, from 1940 to 1960 in Henrico, and from 1960 to 1970 in Chesterfield, the total number of black residents in each area decreased. (RX-57A; A. 158-59; Ex. A. 8).

B.

PATTERNS OF RACIAL COMPOSITION OF METROPOLITAN AREA SCHOOLS, 1954-1971

(1)

Richmond Schools

During the 1954-55 school year, Richmond enrolled 35,857 students with a racial composition of 20,259 white (56.5 per

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Richmond. While the City's educational figure increased only 0.2 in the 1950-1960 period, Henrico's figure increased 1.2 years and Chesterfield's increased 2.0 years.

The City had a smaller proportion of high school graduates than other Virginia cities, smaller than the average of all U.S. cities, and smaller than the average of all Southern cities. In contrast, Richmond's suburbs had a higher percentage of high school graduates than the suburbs of other Virginia cities, higher than the average of all U. S. schools, and higher than the average of all Southern suburbs.

(HX-25, IV-2, 3, 8; Ex. A. 48-50).

Finally, the consultants recommended remedial action in the following terms:

> Governmental action alone cannot resolve all of the regional problems; all sections of the regional community must participate in the elimination of the social and economic disparities that exist between the central city and the suburbs. This is most lucidly illustrated by the failure of most public housing efforts to realize the perhaps too lofty expectations set for them. Educational opportunities must parallel housing improvements.

(HX-25, V-4; Ex. A. 50).

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cent) and 15,598 black (43.5 per cent) students (R. Tr. A-142; RX-75; Ex. A. 21; Pet. A. 417). From 1954-55 through 1966, the school facilities within the City of Richmond remained all-white or all-black in a manner identical to enrollment patterns prior to 1954.

In September of 1969, the racial composition of the Richmond school system was 70.5 per cent black and 29.5 per cent white (RX-75; Ex. A. 21; Pet. A. 416).

In the thirteen-month period from September, 1970, to mid-September, 1971, during which City school officials implemented two desegregation plans, approximately a third of the white student enrollment which originally had been expected to attend Richmond schools in the beginning of the 1970-71 term had left the system (RX-98; Ex. A. 155; Pet. A. 417).

As a result of the annexation of a portion of Chesterfield by the City of Richmond which, for school purposes, did not become effective until the end of the 1969-70 school year, the City system anticipated a significant influx of white students for the 1970-71 term.[28] In planning for the opening of its schools in September of 1970 under the newly approved "Interim" desegregation plan, the Richmond School Board thus anticipated a racial mix of 60 per cent

[28] A number of Chesterfield County schools ranging in student enrollment from 92 to 100 per cent white became a part of the Richmond system pursuant to the annexation decree. A total school population of approximately 8,135 students, 97.5 percent of whom were white, was included within the territory annexed by the City of Richmond. Since there was not sufficient space in the school buildings acquired by the City to house all of the student population living within the annexed area, under the terms of the decree approximately 3,500 students were to remain in Chesterfield schools at the beginning of the 1970-71 school year. Of this 3,500, all elementary students were to enter Richmond schools in September of 1971, with secondary pupils enrolling in September, 1972. Thus, of the total number of pupils gained pursuant to the annexation, more than 4,500 were to have enrolled in the City school system as of September, 1970 (R. Tr. A-143-44; Pet. A. 178).

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black and 40 per cent white, but of the 20,400 whites expected, only 17,203 actually enrolled (RX-75; Ex. A. 21; Pet. A. 167, 417). During the 1970-71 school year under its first plan of substantial desegregation, the Richmond system was 64.2 per cent black and 35.8 per cent white (RX-75; Ex. A. 21; Pet. A. 417).

Based on the pupil membership during the 1970-71 school year, a student population of 63 per cent black and 37 per cent white was projected for the 1971-72 school year as the Richmond system prepared to operate under "Plan III." After two weeks of school in September, 1971, however, the student enrollment in the Richmond system reflected a total of 42,423 pupils with a racial composition of 69 per cent black and 31 per cent white. Of the 17,462 white student enrollment which had been projected for that year, only 13,260 actually had enrolled (RX-98; Ex. A. 155; Pet. A. 417).

Over the period from the 1954-55 school year through the 1969-70 school year, the white student population in the Richmond system fell roughly 40 per cent from a total of 20,259, or 56.5 per cent to a low of 12,622 or 29.5 per cent (RX-75; Ex. A. 21; Pet. 416-17). Even with the addition of a substantial number of white students pursuant to the 1970 annexation, the white student enrollment in the Richmond system as of September, 1971, was rapidly approaching the 1969 low.

During the corresponding period, the black student population in the Richmond system increased from 15,598 to 30,097, or nearly a 100 per cent rise over the fifteen-year span (RX-75; Ex. A. 21; Pet. A. 417).

As of September, 1971, the Richmond system with a racial composition of 69 per cent black and 31 per cent white, operated 56 facilities of which 49 were majority black. Twenty-five of these schools were in excess of 70 per

black and of those, 11 were in excess of 80 per cent
k (RX-98; Ex. A. 155). Richmond high and middle
ols such as Walker, Armstrong, Kennedy, Mosby and
ves and elementary schools such as Baker, Blackwell,
mount, Mason and Norrell which had been built and
ned as all-black schools and which had remained all-
k through 1969-70, ranged from 72 to 88 per cent black
971-72 notwithstanding the successive implementation
xtensive plans of desegregation (RX-98; Ex. A. 155).
ecause of primary reliance on neighborhood zoning from
to 1970, a period during which the City's black student
ulation was doubling, Richmond blacks continued to
nd schools that were segregated in a manner identical
onditions which existed in 1954. The first significant
gregation of these historically all-black schools under-
n in September of 1970 and 1971, accompanied by a
of nearly 35 per cent of the City's white students, left
17,700 or nearly 61 per cent of the City's black pupils
hools which were in excess of 70 per cent black (RX-98;
A. 155).

(2)

Chesterfield Schools

the school year 1953-54, Chesterfield enrolled 9,132
ents with a racial composition of 7,429 white (79.6 per
) and 1,903 black (20.4 per cent) students (Pet. A.
.

uring the 1961-62 school year, there were 85.1 per cent
e and 14.9 per cent black students attending Chester-
schools, whereas, by the 1970-71 school year, the pupil
ulation of Chesterfield was 90.6 per cent white and 9.4
cent black. Over that nine-year period, the total pupil
bership rose from 15,596 to 24,063 even though Ches-
ld lost approximately 8,000 students to the City of

Richmond pursuant to the 1970 annexation (RX-76; R. Tr. A-145; Ex. A. 24).

During the 1970-71 school year, in contrast to the City's operation of 25 facilities in excess of 70 per cent black, the 12 Chesterfield facilities closest to the City were all between 95 and 100 per cent white[29] and over half of all Chesterfield schools were in excess of 90 per cent white (Pet. A. 524-26, 530-32).

For the 1971-72 school year, Chesterfield enrolled a total of 23,754 students with a racial composition of 21,588 white (90.9 per cent) and 2,166 blacks (9.1 per cent) students (Pet. A. 418).

Over the period from 1953-54 school year through 1971-72, the overall percentage of blacks in the Chesterfield school system thus fell from 20.4 per cent to 9.1 per cent.

(3)

Henrico Schools

In 1953-54, Henrico schools enrolled 13,142 students with a racial composition of 11,771 white (89.6 per cent) and 1,371 black (10.4 per cent) students (Pet. A. 418).

In 1970-71, the pupil population in Henrico was 91.9 per cent white and 8.1 per cent black. Over the ten-year period from 1960-61 to 1970-71, the Henrico pupil population rose from 24,059 to 34,470 (RX-77; R. Tr. A-146; Ex. A. 25; Pet. A. 417).

During the 1970-71 school year, in contrast to Richmond's 25 facilities in excess of 70 per cent black, all Henrico facilities except Central Gardens Elementary (96.2 per cent black) were in excess of 70 per cent white and over two-thirds of Henrico's schools were in excess of 90 per cent white (Pet. A. 527-29, 530-32).

[29] See Chesterfield schools listed at note 33 *infra*.

ring the 1971-72 school year, Henrico enrolled 34,317
nts in 43 facilities with a racial composition of 31,299
(91.2 per cent) and 3,018 black (8.8 per cent) stu-
(Pet. A. 417).

the period from 1953-54 to 1971-72, the over-all per-
ge of blacks in the Henrico school system thus fell from
per cent to 8.8 per cent.

C.

RICHMOND METROPOLITAN SCHOOLS

1961-62 the combined Richmond, Henrico and Ches-
d school divisions enrolled a total of 82,761 students
a racial composition of 54,948 whites (66.4 per cent)
7,813 blacks (33.6 per cent). In June of 1971, there
a total of 106,521 students attending schools in the
divisions with an over-all racial composition of 70,664
s (66.3 per cent) and 35,857 blacks (33.7 per cent)
78; R. Tr. A-146; Ex. A. 26; Pet. A. 418). Although
otal number of students attending schools in the com-
area over the past ten years has increased by nearly
0, the over-all racial composition of the three divisions
aried only one-tenth of one per cent which contrasts
ly with the substantial shifts in the racial compositions
separate divisions (RX-78; Ex. A. 26). The Rich-
system has shifted from 57.9 per cent white in 1953-
a current figure of 70 per cent black, while the County
ns over a corresponding period have experienced sub-
al increases in white student enrollment and decreases
over-all percentage of black student enrollment.[30]

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[30] During the period 1955-1970, white student enrollment in both
o and Chesterfield increased by approximately 37,000 (RX-
; Ex. A. 24, 25; Pet. A. 418). In the same general period,
ond experienced a near 100 per cent rise in black enrollment
osing approximately a third of its white pupils from September,
o September, 1971.

Speaking in terms of a single metropolitan school system, the Richmond, Henrico and Chesterfield area during the 1971-72 school year served approximately 103,000 students in 132 schools with an over-all racial composition of approximately 65 per cent white and 35 per cent black students (Pet. A. 417-18).

As of June, 1972, there were approximately 35,000 black students in the Richmond, Henrico and Chesterfield systems of whom 29,747 or 85 per cent attended schools within the City of Richmond. Over 62 per cent of the 29,747 or about 18,500 black students attended 26 City schools which were in excess of 70 per cent black. These 26 City schools served approximately 53 per cent of all black students in the Richmond, Henrico and Chesterfield metropolitan area[31] (Pet. A. 416-18, 530-32). In contrast, the County systems during the 1970-71 school year operated a total of 46 facilities which were 90 per cent or more white (Pet. A. 524-29).

For many years, Richmond, Henrico and Chesterfield have participated in joint programs designed to meet the educational needs of the entire metropolitan school community which could not otherwise have been made available by any of the divisions on a separate basis.[32]

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[31] The June, 1972 student enrollment figures for the City are reflective of data submitted to the district court by the Richmond School Board as of the end of September, 1971, as opposed to the September 7, 1971 figures contained in RX-98, Ex. A. 155. The lower court's figures (Pet. A. 417-18) as well as its compilation for the City system in 1971-72 (Pet. A. 530-32) also reflect the later enrollment report.

[32] Currently, pupils from Richmond, Henrico and Chesterfield are being transported by school buses provided by each of the three divisions to joint schools as follows: (1) branches of a cooperative training center for mentally retarded children, one of which is in northern Henrico and another of which is located in the area which Richmond gained from Chesterfield pursuant to the 1970 annexation; (2) a math-science center also located at the same facility in northern Henrico; and (3) a technical center located within the City of Richmond (A. 417-20; Pet. A. 358).

The Richmond School Board operates two facilities located wholly, in the case of Kennedy High School, or partly, in the case of Fairfield Court Elementary, in Henrico County. Both schools historically have had all-black student enrollments (Pet. A. 388).

There are a number of instances where substantially black Richmond schools and nearly all-white Henrico or Chesterfield schools are located only short distances from one another[23] (Pet. A. 428-29).

During 1970-71, the math-science center at one time or another served a total of 8,872 students from Chesterfield, 10,469 from Henrico and 11,399 from Richmond—most of whom were regularly transported on an inter-jurisdictional basis in order to attend programs at this particular facility (A. 419-20). The same process occurred with regard to the operation of the technical center which normally serves 700-800 pupils per year (A. 420).

[23] The following comparisons are illustrative of this phenomenon:

Richmond Schools 1970-71	Henrico Schools 1970-71	Distance Miles
Kennedy High School 93% black	Henrico High School 96.1% white	4.9
John Marshall High School 73% black	Henrico High School 96.1% white	1.4
Mosby Middle School 95% black	Fairfield Junior High School 81.9% white	3.6
East End Middle School 68% black	Fairfield Junior High School 81.9% white	3.6
Fulton-Davis Elementary 53% black	Montrose Elementary 100% white	1.8
Mason Elementary 100% black	Adams Elementary 86.4% white	3.1
Highland Park Elementary 90% black	Glen Lea Elementary 99.8% white	1.3
Stuart Elementary 91% black	Laburnum Elementary 79.6% white	2.2

In addition both Kennedy and Mosby, two of the City's most heavily black secondary schools in 1970-71, are from approximately two-to-four miles of the following Henrico elementary schools: Ratcliffe—100% white; Montrose—100% white; Glen Lea—99.8% white; and Adams—86.4% white (RX-64-66; Ex. A. 27-31). While precise

4. State and Local Policies and Practices Insuring Maintenance of Segregated Schools Throughout Sixteen-Year Period Following Brown I

Both the Richmond School Board and the plaintiffs presented detailed evidence in the district court concerning the magnitude and continuing effects of racial discrimination in the operation of public schools as it has been practiced by the State and local school authorities both prior to and after this Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954) [hereinafter cited as *Brown I*]. This evidence not only concerned discrimination in pupil assignments, but also involved discriminatory practices in school site selection and construction policies, discriminatory allocation of faculties in the individual systems, as well as a myriad number of policies and programs deliberately designed to perpetuate racial segregation which continued

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mileage was not measured as between Richmond schools and those in Chesterfield nearest to the City-County boundary, a glance at the maps utilized by the Richmond School Board in presenting its plan for metropolitan desegregation (RX-64-66; Ex. A. 27-31) clearly shows that the following Chesterfield schools are within two-to-four miles, or closer, from various Richmond schools and virtually ring the City's southern boundary:

Chesterfield Schools	Racial Composition 1970-71
Robious Road Elementary	98.6% white
Bon Air Elementary	97.5% white
Crestwood Elementary	99.8% white
A. M. Davis Elementary	96.9% white
Providence Intermediate School	97.6% white
Manchester High School	94.8% white
Chalkley Elementary	95.5% white
Hening Elementary	100 % white
Meadowbrook High School	97.3% white
Falling Creek Elementary	100 % white
Falling Creek Intermediate School	97.2% white
Bensley Elementary	99.4% white

(Pet. A. 524-26).

he time of the trial below. Detailed evidence also was
ted supporting the following lower court findings:
ne desegregation of schools within each of the three
divisions was pathetically incomplete at the time of
arings in this case (Pet. A. 237); that the State and
lefendants had failed to utilize powers possessed under
law to eradicate the vestiges of the dual system of
s in the face of actual knowledge of the consequences
n inaction (Pet. A. 233-35, 258-59); that the opposi-
n the part of State and local officials to assignments
lents across existing school division lines for the pur-
f school desegregation was, at least in part, racially
ated (Pet. A. 212, 230, 258); and that the State and
authorities had promoted segregation through the
ment of pupils across existing school and political sub-
n boundaries as well as through the employment of
oles underlying the consolidation of school districts
A. 193-95, 352-56).

district court analyzed the voluminous evidence be-
and made exhaustive findings of fact both in its earlier
ns relating to the Richmond phase of the case (Pet.
110) and with regard to the metropolitan phase in
uary 5th opinion (Pet. A. 164). Although many of
findings were based on uncontradicted evidence, the
of appeals made no reference to the substantial ma-
of them.[24]

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e appellate court, however, did agree with Judge Merhige's
that there had been both state and federal action within the
Richmond tending to entrench and perpetuate patterns of
egregation throughout the City (Pet. A. 572). The court also
with the district court's finding that there had been state
within the Counties of Henrico and Chesterfield as well which
d the location of black residences (Pet. A. 572).

A.

STATE POLICIES AND PRACTICES

In contrast to the court of appeals' reliance upon Virginia's so-called tradition of local control of its public schools, the lower court made significant findings establishing extensive control at the state level in the administration of various programs designed to perpetuate segregated schools both prior to[35] and well beyond 1954[36] (Pet. A. 313-31). Findings were made regarding the deep implication of the State school authorities in the administration of programs divesting the localities of all control over pupil assignments and involving as well the movement of students across school division lines in order to insure the perpetuation of the dual system of schools[37] (Pet. A. 313-31).

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[35] In 1954, the Virginia Attorney General told this Court that: "In general, education in Virginia has operated in the past pursuant to a single plan centrally controlled with regard to the segregation of the races." (Brief for Appellees in No. 3, Davis v. County School Bd., O.T. 1954, at p. 15).

[36] Of course, this case, as did those arising from North Carolina, Georgia and Alabama which were characterized in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 5-6 (1971) as coming from "states having a long history of maintaining two sets of schools in a single system deliberately operated to carry out a government policy to separate pupils in schools solely on the basis of race . . ." arises as well from a State which historically has been indefatigable in its efforts to perpetuate segregated public schools. *See, e.g.*, Brown v. Board of Educ. I & II, 347 U.S. 483 (1954), 349 U.S. 294 (1955); NAACP v. Button, 371 U.S. 415, 435 n. 16 (1963) (noting voluminous list of Virginia school desegregation cases with postscript that despite such effort, at that time "only ½ of 1% of Virginia's Negro public school pupils attend[ed] school with whites"); Griffin v. County School Bd., 377 U.S. 218 (1964); Bradley v. School Bd., 382 U.S. 103 (1965); Green v. County School Bd., 391 U.S. 430 (1968); Wright v. Council of City of Emporia, U.S. , 92 S.Ct. 2196 (1972); *see also* Adkins v. School Bd., 148 F.Supp. 430 (E.D. Va.), *aff'd*, 246 F.2d 325 (4th Cir.), *cert. denied*, 355 U.S. 855 (1957); James v. Almond, 170 F.Supp. 331 (E.D. Va.), *appeal dismissed*, 359 U.S. 1006 (1959).

The district court found that the purposeful, centrally ompelled policy of segregation was vigorously pursued in ie State of Virginia for many years subsequent to this ourt's 1954 declaration of the illegality of laws requiring gregation in public education, and that the enduring ef-cts of this policy were manifested in the racial character-ics of the schools (Pet. A. 258). The district judge noted at even at this late date, the abandonment of such a sition had been gradual, piecemeal, intentionally reluctant d was less than total (Pet. A. 258). Judge Merhige further und that during this entire period, the State Board of ducation had dutifully and hastily communicated to local hool authorities the most recent State enactments de-gned to frustrate desegregation; whereas, by contrast, ring the years from 1965 to date, during which the State ard in order to avoid the cutoff of federal funds had exe-ted a compliance agreement with HEW, it had failed to sseminate to local school authorities the substance of even e most important decisions of this Court in the area of hool desegregation[25] (Pet. A. 350). The district court found

[25] The details of some of these programs as set out in the district urt's opinion may be highlighted as follows: a series of memoranda the State Superintendent of Public Instruction to local school thorities and State Board of Education resolutions advising of the opriety of continued operation of segregated schools following this ourt's directives in *Brown I* and *Brown II* (Pet. A. 314-16); the sting of the power of enrollment of pupils in the centrally-controlled pil Placement Board (Pet. A. 313-14, 318-20); procedures authoriz-g the State through the office of its Governor to assume control over d close any school which either voluntarily or under court order came integrated (PX-144-I; Pet. A. 316-18, 533-36); and the ntralized administration of programs designed to fund intra- or ter-divisional transfers of students in the interest of avoiding at-ndance at schools which had become integrated (Pet. A. 320-31).

[26] A deputy superintendent in the State Department of Education as assigned the task of administering the State's compliance with e Civil Rights Act of 1964. Prior to the passage of the Act in July, 64, no one in the State Department of Education had been re-

that for the major part of the 17-year period from *Brown I* to date, the State of Virginia's primary and subordinate agencies with authority over educational matters had devoted themselves to the perpetuation of a policy of racial separation in the public schools (Pet. A. 215).

As a result of these State practices and policies, each of the three school systems in the Richmond area, and indeed, others throughout Virginia, remained virtually segregated even after the adoption of court-ordered or HEW-induced freedom of choice plans. Still, there was no more than token

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quired to assume any responsibility concerning desegregation (A. 680; Pet. A. 332). During the following years the State Department's efforts in securing local compliance were confined solely to passing various data between HEW and the local divisions (A. 678-93). Even this minor role, however, had its limits as was evidenced in a memorandum written in 1969 by this particular deputy superintendent concerning a government request for information on certain Virginia school divisions wherein it was suggested that the State deny having data that was, in fact, available (A. 681-83; RX-87; Ex. A. 82; Pet. A. 344-45). Advice concerning the State's role in the process was offered as follows:

> I do not think it is sound, politically or otherwise, for the Department to assume the role of a coercive collection agency for the Federal government in instances where local school systems refuse to supply the information and are willing to forego Federal aid. The Federal government has ample authority to exercise over localities if it desires to institute suit through the Justice Department to place such localities under Court ordered desegregation plans. It would be ill advised, in my judgment for our Department to align itself with the Federal government in this confrontation. . . .

(RX-87; Ex. A. 82-83; Pet. A. 346). This individual could recall few instances where the State Department of Education had advised local school authorities of relevant court decisions and was unable to produce any such notification of this Court's action in *Green v. County School Bd.*, 391 U.S. 430 (1968) (A. 717-20; Pet. A. 350).

Even though funds had been available for nearly five years, the State Department of Education failed to apply for any federal grant under the technical assistance (in desegregating local divisions) program until late 1970 (A. 576-77; Pet. A. 348-49).

tion, and in 1968-69 in the Counties and 1969-70 in
ty, all of the traditionally black schools remained all-
Pet. A. 524-32).

erimposed over the lack of any substantial desegrega-
the Richmond community during the sixteen-year
following *Brown I* was the rapid increase of white
ts in the Chesterfield and Henrico systems, and the
r cent growth of the black student population of the
The continued use of pre-*Brown* criteria in the selec-
f school sites coupled with the use of neighborhood
,[39] thus caused the further solidification of patterns
egation in the community.[40]

use of the State's "defiance of the announced consti-
l mandate," and the inevitable effect of such policies
racial characteristics of Richmond area schools, the
court concluded that

]he task of disestablishing the dual system may there-
re be much more difficult in 1971 [and that] [t]he de-
ndants ought not to benefit from such self-imposed
ardships.

Against this background the "desegregation" of
hools within the city and the counties separately is
athetically incomplete. *Not only is the elimination
racially identifiable facilities impossible of attain-
ent, but the partial efforts taken contain the seeds of
eir own frustration.*

A. 237) (emphasis added).

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ese processes are discussed more fully at pp. 45-47 *infra.*

Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1
71), where in the context of the Charlotte metropolitan area,
urt recognized that the process of greatly expanding school
y for white students in the suburbs while at the same time
ing white schools to black schools within the central city had
. . . a potent weapon for creating or maintaining a state-segre-
hool system." *Id.* at 21.

At the same time the State school authorities were adhering to the foregoing policies through either action or inaction on their part, the various school and governmental officials in the Richmond metropolitan area also were actively discriminating against blacks in education, housing and employment.

B.

LOCAL POLICIES AND PRACTICES

(1)

Richmond

In his initial opinion in the Richmond phase of the case on August 17, 1970, Judge Merhige included a detailed set of findings indicating the degree to which freedom of choice had failed to remove the racial identity of the substantial majority of the public schools within the City system (Pet. A. 6-8). Also included within that opinion were extensive findings on the magnitude of illegal residential segregation as it existed within the City and its interrelationship with school segregation (Pet. A. 8-13). Judge Merhige specifically found that prior State laws which had required racial segregation in housing and schools, had long term effects which had not been diminished by the earlier lifting of the formal restrictions (Pet. A. 10).

Thus, even though matters pertaining to the desegregation of the Richmond system had been litigated throughout the 1960's, by the end of the 1969-70 school year approximately 43,000 students were enrolled in schools within the City which were segregated in virtually the same manner as they had been in 1954.[41] Neither had faculty and staff desegre-

[41] As of May 1, 1970, seven high schools were operated within the City of which three were 100 per cent black, three were 99.3 per cent, 92 per cent, and 81 per cent white and the remaining one was 68 per cent black. Also, at that time on the middle school level, two 100 per cent black schools, three others that ranged from 99.9 per

on been accomplished (Pet. A. 7-8). The district court cluded that there was little doubt that Richmond "had achieved a unitary system as required by law" (Pet. A.

s noted at p. 7 *supra*, the district court in approving Richmond School Board's first significant plan of de-egation for the 1970-71 term, cautioned that the plan d be operated only on a temporary basis owing to the tantial number of virtually one-race schools remaining ne elementary level. During the 1970-71 year, approxi-ely 9,000 blacks in the City system attended thirteen ols which were at least 90 per cent black; additionally, mond operated four all-white elementary facilities (Pet. 6).

(2)
Chesterfield

hesterfield schools were operated on a completely segre-d basis for at least twelve years following this Court's sion in *Brown I*. During the school years 1966-67 through 9-70, the student body at one of the County's secondary ols was 100 per cent black and its faculty over 90 per black, while during the 1968-69 school year there were schools with all-black student enrollments even though ks in Chesterfield represented only 10 per cent of the nty's total school population (Pet. A. 524-26). In of 1968, Chesterfield was threatened with the termi-on of all federal aid owing to a deficient plan for de-egation of its schools, and only then did Chesterfield

to 69 per cent black, and three that were over 91 per cent white operated within Richmond. On the elementary level, seventeen schools were 100 per cent black, four others were in excess of per cent black, two were 100 per cent white, and thirteen others ed upward from 90 per cent white (Pet. A. 6).

authorities propose a plan of desegregation which was not to take effect until September of 1970 (Pet. A. 382).

In the 1970-71 school year, Chesterfield operated six elementary schools which were in excess of 99 per cent white with two of these being 100 per cent white; at the same time three of Chesterfield's secondary facilities were in excess of 97 per cent white (Pet. A. 524-26). Also at this time and against the background of a system that was less than 10 per cent black, the Matoaca Lab Elementary facility which had been operated jointly with Virginia State College remained at 99 per cent black even though it was within reasonable pairing distances of Bensley and Curtis, two virtually all-white schools (Pet. A. 384-85, 526). As late as August 20, 1971, Chesterfield received and transmitted State funds to Virginia State College for the support of Matoaca Lab School which at that time remained an all-black facility. Additionally, Chesterfield provided bus transportation for pupils attending that school (Pet. A. 386).

In 1969-70 there were nine Chesterfield County schools without a single black on their faculty, while during the same year 14 facilities including three of County's largest high schools had only one black faculty member (Pet. A. 524-26). Throughout the 1970-71 school year, six Chesterfield facilities were without any black faculty members and nine schools had only a single black on their staff (Pet. A. 524-26). By way of contrast, in the same year the Matoaca Laboratory School in Chesterfield had a 100 per cent black faculty (Pet. A. 384, 526).

The district court also made extensive findings regarding the general discrimination which persisted in all aspects of Chesterfield practices and policies of which the following are representative: it maintained a number of inferior all-black schools even during the 1960's, and black administrators were often demoted upon the closing of such schools

A. 380-82, 377); the Chesterfield County governing had, as late as five years after the *Brown I* decision, its opposition to any integration of schools whatsoever rged State authorities to hold the line against school ation (Pet. A. 379); through the 1969-70 school year, rfield operated an all-black secondary school whose ance zone constituted the entire County (Pet. A. in 1971, a Chesterfield political leader openly called County residents to revolt rather than participate in integration involving that County and the City of ond"[42] (Pet. A. 412-13); Chesterfield County has had blic housing authority and has made it clear that it desire for any low-income housing projects;[43] public

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rtly after this Court's decision in *Swann v. Charlotte-Mecklen-d. of Educ.*, 402 U.S. 1 (1971), the Chairman of the Board of sors of Chesterfield County publicly recommended to his con-s:

revolt in the form of a school boycott, separate private school stem, or even freedom of choice school assignments and letting deral troops see what they can do about it, rather than inte-ate the schools in Chesterfield County with the City of Rich-ond . . .

-68, 671; Pet. A. 412). He clarified his statement by explaining nen *Swann* was decided Chesterfield citizens were "fit to be nd that he had reacted in such a manner because he was ng the feelings of the people of his political jurisdiction (A. . A. 413). This individual further related his belief

at firm action by the people was necessary to indicate and ow that they were not pleased with the way that conditions re going and the un-Americanism that they believed was tak-g place because this Charlotte-Mecklenburg case of course ade the people afraid that their community schools would be stroyed.

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poenaed as a witness by the plaintiffs, the Executive Director Richmond Redevelopment and Housing Authority testifying gard to both Chesterfield and Henrico stated in effect that o the scarcity of available sites in Richmond that it would be elpful" for his authority to obtain County locations for low

employment in Chesterfield over the years has been available most exclusively to whites (PX-107B-C; R. Tr. M-46; Ex. A. 91; Pet. A. 510); most Chesterfield administrative jobs are manned entirely by whites, with blacks occupying at best menial positions (PX-107B-C; Ex. A. 86; Pet. A. 514); and blacks in Chesterfield have settled in small, contiguous cells rather than in any widely dispersed pattern throughout the County as a whole (Pet. A. 511).

(3)

Henrico

Henrico schools as well were totally segregated well into the mid-1960's. A major secondary school which served the

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rent housing (A. 612, 616). Questioned if he had considered the possibility of obtaining sites in those areas, the witness further testified as follows:

> A. We have discussed a number of times the possibility of approaching the two counties regarding some authorization to undertake development in the counties, but have not done so.
>
> Q. Why is that, sir? A. Two reasons. One was that we saw almost no likelihood of success; secondly because of the existing tensions between the City and county groups.
>
> Q. What was the basis for seeing no reasonable possibility of success? A. County officials had declared their position, particularly in the case of Chesterfield, in no uncertain terms. We saw no likelihood of success on that account.
>
> Q. Is there authority for the expansion—for the construction of projects outside the city limits by the Richmond Public Housing Authority if it had the approval of the surrounding jurisdiction? A. Yes. It is the state law that contemplates this possibility in two or three different ways.
>
> Q. And can the housing problem in this area be solved without the cooperation of these suburban counties? A. I don't believe it can be solved without metropolitan cooperation.
>
> Q. Because of the difficulty you have had in terms of both acquiring new sites and rejections of sites in apparently predominantly white areas, is there any realistic possibility of location of governmental housing, disestablishing the existing pattern of residential racial segregation in the Richmond community? A. If I understand your question, I don't think so.

(A. 616-17).

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County remained all-black until it was closed at the the 1968-69 school year (Pet. A. 389). In September 6, Henrico school authorities informed State school ities that the County would not cooperate with HEW matter of faculty desegregation (Pet. A. 343). The uthorities took no action upon this notification, and 3 were advised by HEW that federal funds for the o school system were being terminated owing to its submitted an inadequate and ineffective plan for olishing the elimination of its dual school system . 344). Only in the face of pending HEW enforce- roceedings did Henrico finally adopt a desegregation hich was not to commence until September of 1969 A. 393). Pursuant to its new plan, Henrico at the ng of the 1969-70 school year closed five formerly k schools and black principals were generally de- o lesser jobs (Pet. A. 393-94).

ng the 1970-71 school year, Henrico still operated 14 lementary facilities with a racial composition of 99 t or more white with six of these remaining 100 t white (Pet. A. 529). Against the background of that was less than 10 per cent black, Henrico school ties the same year placed 40 per cent of the County's lack elementary enrollment in one school, Central s, which was more than 96 per cent black and ne-to-two miles of all-white elementary schools (Pet. 529). This concentration was not alleviated until e commencement of the trial below (Pet. A. 395-96), method used placed the principal burden of trans- n upon the black students attending grades 1-5 at Gardens." At least six of Henrico's elementary

Superintendent of Henrico Schools testified as to the details lan used to desegregate Central Gardens Elementary which mplemented until after the commencement of the trial below

schools, Crestview, Lakeside, Montrose, Ratcliffe, Sandston and Holladay which were built as all-white schools were still 100 per cent white during the 1970-71 term. Henrico also operated Tuckahoe Junior High which was 98.6 per cent white and Freeman High School, the County's largest containing nearly 2,000 students, remained 99.3 per cent white during the 1970-71 school year (Pet. A. 527-29).

Even though the Superintendent of Henrico Schools admitted that one of the indicia of racial identifiability was the faculty composition of a particular school (R. Tr. H-89),

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(A. 591-95). Central Gardens had gone from 62.6 per cent black in 1966-67 to over 96 per cent black in the 1970-71 school year. During that same time Henrico operated a number of elementary facilities, all-white or nearly so since their opening, which were located in close proximity to Central Gardens:

School	*1966-67*	*1967-68*	*1968-69*	*1969-70*	*1970-71*	*Distance from Central Gardens*
Central Gardens (black)	62.2%	78%	91%	95%	96.2%	
Ratcliffe (white)	100%	100%	100%	100%	100%	1 mi.
Glen Lea (white)	100%	100%	98.1%	100%	99.8%	2.4 mi.
Adams (white)		97.4%	96.5%	86.3%	86%	3.4 mi.
Highland Springs (white)	99.3%	99.6%	99.3%	95.3%	99.6%	8.5 mi.

(A. 589-91; Pet. A. 529). The plan adopted by Henrico required all students in grades 1-5 at Central Gardens (these were nearly all blacks) to be transported out to the other facilities listed above; in turn, all 6th graders from those schools were to be transported to Central Gardens (A. 592, 595). The resulting racial composition in each school was approximately 70% white and 30% black (A. 592), and the Henrico Superintendent expressed the hope that these ratios would insure stability in the racial compositions of the schools involved (A. 595). Even though the burden of transportation was thus placed on the youngest black pupils, the Henrico Superintendent nevertheless saw the plan as educationally sound and feasible (A. 593-94).

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numerous Henrico schools during the period from 1966-67 through 1970-71 were without any black faculty members whatsoever (Pet. A. 397). During the 1969-70 term, four Henrico schools had no black faculty members while 23 facilities had only one black on their respective faculties (Pet. A. 527-29). In the 1970-71 school year the number of Henrico facilities without any black faculty members had increased to nine, while there were still 21 schools which had only one black member apiece (Pet. A. 527-29).

The planned reassignment of faculty in an effort to eliminate the racial identifiability of many of the Henrico schools was not undertaken until after the County officials had been joined as parties in this case (Pet. A. 397). During the 1971-72 school year, 25 facilities in Henrico had only one black faculty or staff member, and the district court was unable to determine how many of these were classroom teachers (Pet. A. 397).

Similar to its extensive findings of general discrimination in Chesterfield the district court made the following conclusions regarding Henrico: HEW officials had charged in the early part of 1968 that Henrico had made insufficient progress toward school desegregation in that County school authorities were maintaining small inadequate all-black schools and the program at the all-black secondary school was demonstratively inferior to those being offered at other schools in the system (Pet. A. 392); housing patterns in Henrico were segergated, and the blacks that were able to move into that County settled principally into small colonies (Pet. A. 506); Henrico County has had no public housing authority or programs, nor any rent supplement programs[45]

[45] See note 43 *supra*. One of the witnesses at the trial below, a black citizen of Henrico, told how he had attempted (and failed) to get County approval for low cost housing because he felt that "Henrico County could not indefinitely dump their unfortunate families on Richmond" (A. 472).

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(Pet. A. 510); and public employment in Henrico over the years has been available almost exclusively to whites (PX-104-107A; Ex. A. 85; Pet. A. 510).

C.

STATE AND LOCAL DISCRIMINATION IN SCHOOL SITE SELECTION AND CONSTRUCTION

In discussing the role of the State school authorities in the maintenance of policies and programs of school site selection and construction, the district court found that decisions on school locations as well as the expansion of existing facilities in the three metropolitan systems were matters for central as well as local control (Pet. A. 210). The district judge further found that the approval of State school authorities was required for the site selection for any new facility by the various localities (Pet. A. 284). Not until 1968 did the State school authorities caution all local superintendents to consider the effect on desegregation of new school construction; however, this advice was never incorporated into State procedures for review of construction proposals, and the contribution that each new proposal would have made to the elimination of the dual school system was not considered (Pet. A. 286). Current State Department of Education regulations concerning school facility site selection do not, in either recommendations or binding regulations, refer to desegregation (Pet. A. 289).

Throughout the period from 1954 to 1971, each of the school divisions with the support and authorization of the State school authorities pursued programs and policies of discriminatory school site selection and construction (Pet. A. 204-07). The district court's findings with regard to City practices have been detailed elsewhere.[46] With regard

[46] See Bradley v. School Bd. of City of Richmond, 324 F.Supp. 456 (E.D. Va. 1971).

Henrico and Chesterfield systems, the district judge
finding that new school construction was planned
ck schools years after *Brown I* without regard to the
ity of accommodating the black pupil population in
chools (Pet. A. 204).

Superintendent of Chesterfield schools was unaware
1968 memorandum distributed by the State school
ties, and the district court found that none of the
field schools including those under construction at
e of the trial had been planned with a view toward
g the desegregation of the various County schools
a strategic location of the site (A. 494; Pet. A.
The district court also concluded that Henrico school
ties had, without exception, likewise ignored de-
tion requirements in planning and constructing new
(Pet. A. 298-301).

result of these programs and policies pursued at both
nd local levels, the district court concluded that the
ation of the racial identifiability of the particular
s while each system expanded by means of the crea-
new schools planned for one race or the other, had
assisted in the continuation of prevailing housing
tion which, coupled with the continued use of neigh-
l zoning, further entrenched existing school segrega-
Pet. A. 207). Judge Merhige concluded that such
onstruction policies contributed substantially to the
segregated conditions within each of the three school
and specifically found that the longer term impact
ame policy had been the accentuation of the racial
ortion between the City school system and those of

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note 40 *supra* and accompanying text.

the two Counties[48] (Pet. A. 200). In viewing the over-all process, the district court found that the continued operation of the schools of each subdivision as racially identifiable facilities necessarily caused each new facility and old ones as well to take on the label of a "black" or "white" school, and that this process had led to the current racial identifiability of the entire systems in issue—the Richmond City system identifiable as black, and that of each County as white (Pet. A. 200-01).

The district judge in making the above findings regarding the extensive discrimination which had been practiced by the various State and local agencies from the period following this Court's decision in *Brown I* up until the trial of this matter, concluded that the long years of the maintenance of the dual system, as well as the massive and effective State-managed efforts to oppose desegregation under free choice assignment plans had caused more and more facilities in the

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[48] While each of the Counties were constructing new white schools in their most urbanized areas contiguous to Richmond, City schools were at the same time being converted from white to black facilities as established black neighborhoods expanded. During this period such a policy and other practices as well produced obvious disincentives for blacks looking to relocate in the suburbs; while building new schools for whites, both Henrico and Chesterfield even in the mid-to-late 1960's were operating small inadequate black schools which were demonstratively inferior, see pp. 37-38, 43 *supra;* through June of 1969, Henrico was operating an all-black secondary school in its northern sector which necessitated the transportation of blacks, some for substantial distances, from all parts of the County (A. 587-88; Pet. A. 389); through June of 1970, Chesterfield maintained an all-black secondary facility whose attendance zone likewise was comprised of the entire County (A. 492; Pet. A. 383); and the housing and employment available for blacks in each of the Counties was severely limited, see pp. 39-40, 43-44 *supra.*

Such conditions were no doubt recognized by the County-retained consultants, see p. 19 *supra,* who in their initial report submitted on June 1, 1967, found that ". . . the attitudes and practices of the counties and their residents . . . contributed to the high and growing percentage of Negroes in the central city" (RX-47, I-3; Ex. A. 36).

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a to become segregated by a process of white withdrawal
l black occupation (Pet. A. 230). These factors together
h forces containing blacks in the City, were found to
e produced a community school system divided into ra-
lly identifiable sectors by political boundaries (Pet. A.
). In discussing the rapid progression of racial dispro-
tion between the City and each of the County systems,
lge Merhige found that the desegregation of Richmond
well as Henrico and Chesterfield schools could not be
ieved within the current school division boundaries owing
substantial part to the long and continued deferral of
ntiffs' constitutional rights which had been deliberately
cticed on the part of the appropriate State and local au-
rities (Pet. A. 207).

5. Desegregation Plan Approved By District Court

When it initiated the metropolitan phase of this case, the
hmond School Board advised that it was preparing a
egregation plan for all schools in the Richmond metro-
tan area. The amended complaint filed by the plaintiffs
suant to the lower court's order of December 5, 1970,
uded a specific request that the district court require all
ndants to prepare and submit a desegregation plan for
combined divisions as well as a prayer for relief through
consolidation of the three systems, or alternatively,
ugh a contractual exchange of pupils between the sepa-
divisions. See p. 9 *supra*. In spite of ample oppor-
ty however, none of the State and County defendants
gested any desegregation plan in lieu of the one developed
ne City school authorities[42] (Pet. A. 359). The Richmond

[42] As early as April of 1971, in an attempt to avoid delays in the
t the plan proposed by the Richmond School Board were ulti-
ly approved, the district court advised the State and County de-
ants to confer with the City school administration for purposes of

School Board's metropolitan desegregation plan was thus the only one before the district court at the time of its decision.[50]

The plan itself embodied most of the tools of desegregation specifically approved by this Court in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) [hereinafter cited as *Swann*]. The plan envisioned the consolidation of the Richmond, Henrico and Chesterfield school divisions into a single entity which would be administered and operated by a centralized school authority pursuant to provisions of State law many of which have existed at least since 1954[51] (Pet. A. 430).

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resolving problems incident to the implementation of the metropolitan desegregation plan which City authorities were then preparing (A. 136-42). During the trial in the lower court, however, it became apparent that neither the State nor County defendants had expended any effort or time in suggesting improvements to the plan or in developing any alternative proposals (A. 1009-11). It was not until after the record in this matter had been transmitted to the court of appeals that the State and County defendants in applying for a stay in that court suggested an alternative method of assignment involving a contractual exchange of pupils between the three school divisions (A. 1346-48).

[50] At the time of his decision, Judge Merhige made it clear that he stood ". . . ready at any time to consider any proposed modifications to the plan to be approved" (Pet. A. 519). He further stated in his order that the State defendants could submit ". . . any . . . modifications, changes or recommendations, as may be desired. . ." (Pet. A. 541).

[51] Under laws in effect prior to July 1, 1971, at which time the revised constitution of Virginia and its implementing legislation became effective, the State Board of Education had the unfettered power to create school divisions comprised of more than one political subdivision (§ 22-30; Pet. A. 607). The effect of this action *alone* would have been to place two or more divisions under one superintendent for administrative purposes, with each of the divisions retaining a separate school board (A. 943). Had the Richmond, Henrico and Chesterfield school divisions been so combined, the Superintendent of Chesterfield schools admitted in the trial below that the extreme disparities in the student racial compositions as between the City and County components would have likely necessitated some form of remedial action (A. 494-95).

During the pendency of the proceedings below, however, the statu-
y provision was amended so as to restrict the previous power of the
ite Board of Education to divide the State into school divisions
nprised of more than one political subdivision (A. 941-43, 949). An
icial of the State Department of Education admitted that the
islature was no doubt conscious that the amendment might have
effect on this case (A. 942). The State Board, acting pursuant
the new statute, in fact, redrew all school division lines in the
ite as of July 1, 1971 (RX-83; R. Tr. F-150; Ex. A. 67; Pet. A.
)-81).

Now under the current law, the State Board of Education may
only upon the request of the school boards with the concurrence
the governing bodies of the affected school divisions in consolidating
otherwise altering such divisions (§ 22-30; Pet. A. 617). Where a
gle school division comprising more than one political subdivision
s been created in this manner, the supervision of such a division
ıst be vested in a single school board and a division superintendent
ected by that board (§§ 22-100.1, -32; Pet. A. 617-18). Current
ite law also requires adherence to a definitive scheme of school
ard representation and administration and operation of a school
ision composed of more than one political subdivision. Specific
visions govern:

> (1) the composition, appointment and terms of members of a school board of a division composed of two or more political subdivisions (§ 22-100.3; Pet. A. 618); (2) the qualification and duties of the consolidated division board members (§ 22-100.4; Pet. A. 610); (3) The corporate status of such a board and its general powers (§ 22-100.5; Pet. A. 610); (4) the compensation of the board members (§ 22-100.6; Pet. A. 620); (5) the transfer of title to school property (§ 22-100.7; Pet. A. 620); (6) the State Board's responsibility for promulgating rules and regulations for the financial plan of operation of the consolidated division schools (§ 22-100.8; Pet. A. 611); (7) the formula for the allocation of operating costs, capital outlay and the incurring of indebtedness for school construction (§ 22-100.9; Pet. A. 621); (8) the designation of the fiscal agent for the consolidated division (§ 22-100.10; Pet. A. 612); and (9) the effective date for the formation of the board and its assumption of the supervision and operation of all schools within the consolidated division (§ 22-100.11; Pet. A. 612).

th the exception of the statute requiring local initiative and con-
t, the district court in its January 10, 1972 order specifically di-
ted that the creation and operation of the single school division
sisting of the City of Richmond and the Counties of Henrico and
esterfield be accomplished in conformity with these provisions of
ginia law (Pet. A. 538-40).

Current Virginia school laws contain no affirmative requirement
t a school division conform to political subdivision boundaries.

Under the Richmond metropolitan desegregation plan, the entire area would be divided into six geographical subdivisions (A. 197; RX-64; Ex. A. 27) each with a student population varying from approximately 17,000 to 20,000[52] (Pet. A. 430, 432). Certain administrative and curriculum decisions would be delegated to a separate board for each subdivision (A. 197; Pet. A. 430).

The plan would eliminate all one-race schools in the Richmond metropolitan area with resulting racial compositions ranging from 17 to 40 per cent black. No school in the Richmond, Henrico and Chesterfield division would have a racial composition substantially disproportionate to the over-all composition of the area-wide school population (65 per cent white and 35 per cent black). As a starting point in the development of the metropolitan plan, the Richmond School Board utilized this over-all ratio in attempting to formulate an effective remedy.[53] Evidence tendered during

[52] The exception to this general configuration is subdivision 6 which is comprised of the southern portion of Chesterfield County, a relatively sparsely populated area containing approximately 9,000 students (A. 205; RX-64; Ex. A. 27; Pet. A. 419). Concerning the over-all size of the consolidated school division as well as the approximately 104,000 pupils (1971-72 total enrollment in the three subdivisions was 101,318 [Pet. A. 417-18]) it would contain, Judge Winter noted that Virginia had six school divisions each encompassing more than 700 square miles, as well as another school division, Fairfax County, which enrolled over 135,000 students, or over 30,000 more than would be enrolled in the proposed Richmond, Henrico and Chesterfield school division (Pet. A. 600, n. 16).

[53] This Court has approved of the use of such techniques on the part of school authorities. Swann, 402 U.S. at 24-25; North Carolina State Bd. of Educ. v. Swann, 402 U.S. 43, 46 (1971).

Also, Congress has found the use of such area-wide proportions to be of assistance in determining the effectiveness of urban school desegregation. Under the "Emergency School Aid Act", 20 U.S.C.A. §§ 1601-19 (Supp. Oct. 1972) which became effective on June 23, 1972, emphasis was directed toward the alleviation of "minority group segregation and discrimination" particularly within the context of this nation's Standard Metropolitan Statistical Areas. *E.g.*, 20 U.S.C.A. §§

trial to establish the probable degree of stability and nate effectiveness to be achieved under the proposed was accepted by the lower ourt as demonstrating that racial compositions would be within what was described ducators and sociologists as an "optimal range" (A. 242, 78, 374-75).

he district court, in referring to the ratios used by the mond School Board, noted that variations might be un-dable, and further admonished all parties that it did not nd to require a particular degree of racial balance or (Pet. A. 519). Even though (1) the ratios used were e of the City Board, (2) the Board's plan was the only before the lower court, and (3) the district judge had ifically stated his readiness to entertain proposed modifi-ns to the plan, as, for example, through the contractual ange of pupils in lieu of consolidation, the court of als viewed the relief as imposing a fixed racial quota held that it was beyond the power of the district court pose any particular degree of racial balance as a matter bstantive constitutional right (Pet. A. 570). The court peals, in discussing the proposed racial composition of schools under the metropolitan plan, found, however, the evidence seemed to indicate its workability in prac-(Pet. A. 570). Judge Winter disagreed that the basis he relief was a desire on the part of the district court hieve as much racial balance as possible. In his view, wer court was within its equitable remedial discretion r *Swann* in considering racial ratios as a part of the decreed. Judge Winter found that the range of racial s among the various subdivisions of the consolidated

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1605 (a)(2)(A), (B), 1608. It is significant that Congress de- an "integrated school" in terms of minority enrollment con- ng at least 50 per cent of the *over-all minority student population the SMSA as a whole*. 20 U.S.C.A. § 1619(6) (emphasis l).

division, as well as among the various schools within the subdivisions, was sufficient proof that the basis for the majority's opinion was without support (Pet. A. 602).

The substantial majority of students would attend a school located within the particular subdivision wherein they reside, and in no case would there be assignments between non-contiguous subdivisions. Approximately 36,000 students would be exchanged between the City system and the two Counties, with about 1,000 more whites than blacks being involved in this central city-suburban exchange (A. 232-33; Pet. A. 423). No exchange is contemplated between students residing in the more rural portion of southern Chesterfield (subdivision 6) and those in the City of Richmond (A. 205-06; Pet. A. 425-26).

Approximately 68,000 pupils were transported to school by yellow buses by the three school divisions operating independently during the 1971-72 school year (A. 233-34). Under the metropolitan desegregation plan, approximately 78,000 students would be transported from home to school, with 42,000 of these attending schools in their neighborhood zone of residence (A. 232; Pet. A. 423).

Also, during the 1971-72 school year the three school divisions operated a total of over 600 yellow buses, and of this amount only 524 would be necessary to meet the transportation requirements of the metropolitan plan (A. 236; Pet. A. 424). Travel times and distances compare favorably with those experienced presently in each of the three school divisions independently (Pet. A. 422-24). During oral argument in the court of appeals, the State and County defendants conceded, and that court later agreed, that this was not a busing case (Pet. A. 563 n. 2).

The separate treatment accorded students living within the large area composed of southern Chesterfield (subdivision 6) is indicative of the flexibility inherent in the

ichmond Board's plan. Other factors likewise demonstrate e ready adaptability of the plan: (1) the method of se-cting the students for the central city-suburban exchange uld be varied to meet the exigencies of the particular situa-on (A. 220-24, 1320-26); (2) the racial compositions of e various schools would range from 17 to 40 per cent ack; and (3) there was trial testimony to the effect that und judgment and common sense in general, in lieu of any flexible criteria, would be utilized as the particular circum-ances might warrant (A. 205, 219, 1320-26).

SUMMARY OF ARGUMENT

The propriety of the exercise by a district court of its medial powers to enjoin the creation of new school division es where the effect thereof enhances a return to "black" or white" schools or would otherwise impede the disestablish-ent of a state-mandated dual system of schools has been tablished by this Court in *Wright v. Council of City of mporia*, ___ U.S. ___, 92 S.Ct. 2196 (1972) [hereinafter cited *Emporia*] and *United States v. Scotland Neck City Board Education*, ___ U. S. ___, 92 S.Ct. 2214 (1972) [herein-ter cited as *Scotland Neck*]. Conversely, this case poses estions relating to the extent to which existing school lines n effectively thwart remedial efforts to eliminate the reality black schools surrounded by white schools within a single etropolitan community.

Both the necessity for and the remedial techniques to be ilized in the elimination of racially identifiable schools ithin school systems consisting of a black core city and hite suburban areas have also been prescribed by this Court *Swann* and *Davis v. Board of School Commissioners*, 402 .S. 33 (1971) [hereinafter cited as *Davis*]. One feature, owever, distinguishes the metropolitan areas of Charlotte id Mobile from that of Richmond. Owing to a unique

method of political subdivision alignment employed in Virginia, the center-city as a separate administrative unit for school purposes is completely enveloped by the two suburban Counties which likewise operate separate school systems. As an inevitable result of both this administrative arrangement and years of state and local discrimination, black City children attend historically all-black schools which continue to range from 70 to 90 per cent black surrounded by but in isolation from thousands of suburban students attending schools in two 90 per cent white school systems. The social and economic unity pervasive in so many other phases of life in the Richmond metropolitan community, however, belies such a separation of the area's school children.

In seeking to rectify the inequality inherent in the foregoing arrangement, both the Richmond School Board and the plaintiffs herein requested the interdivisional assignment of pupils as the essential method of desegregation envisioned in both of the alternative forms of relief sought, *i.e.*, the consolidation of the three systems substantially in accordance with provisions of State law or a contractual exchange of students between the separate divisions.

After finding that the racial identifiability of schools persisted in the Richmond metropolitan area and that "desegregation of the schools of the city and the counties as well [could not] be achieved within the current school division bounds" owing in substantial part to the deliberate deferral by the State and local authorities of plaintiffs' constitutional rights (Pet. A. 207), the district court had a duty to consider all reasonable alternatives and to select that plan which afforded the most realistic promise of working to insure the elimination of all racially identifiable schools in the Richmond metropolitan area. The district court thus approved the desegregation plan presented by the Richmond School Board calling for the consolidation of the three metropolitan

ea divisions substantially in accordance with existing pro-
ions of State law as "a first, reasonable and feasible step
ward the eradication of the effects of past unlawful dis-
imination" (Pet. A. 239).

I.

It is submitted that the district court neither exceeded its
thority nor abused its discretion in ordering the imple-
ntation of the metropolitan desegregation plan devised
the Richmond School Board. A practical application of
e explicit remedial guidelines established by this Court to
gely uncontradicted evidence compels the conclusion that
e greatest amount of actual desegregation, the elimination
racially identifiable schools and the abolition of segrega-
n and its effects can only be accomplished by the assign-
nt of students across existing school division lines. A pro-
ion of State laws negates the existence of any State policy
restrict school divisions to one political subdivision. More-
er, the traditional disregard of existing school division
es to meet educational needs and to perpetuate segrega-
n dispels any overriding State interest in restricting the as-
nment of pupils to the political subdivision in which they
ide.

Even a cursory review of the variations among the several
tes in the structuring of administrative units for the op-
ation of schools exposes the untenable nature of and the
ongruity inherent in any judicial standard which regards
sting school boundaries as sacrosanct.

It is of the utmost significance that all that is required to
ure the complete removal of the racial identifiability of
ools in the Richmond metropolitan area is the employ-
nt of measures and devices far less drastic than were
se seized upon by the State and local school authorities
perpetuating illegal segregation for years after *Brown I*.

Since methods incorporated in the Richmond School Board's desegregation plan, *e.g.*, the assignment of pupils across existing school division lines and a legislatively conceived consolidation of separate divisions, were used throughout this State in open defiance of *Brown I*, it is inconceivable that the equitable discretion of the district court can be restricted to remedial techniques less extensive than those utilized to establish and perpetuate the denial of equal educational opportunity.

This record establishes a close interrelationship between the rationale underlying the legal commands of *Brown*, *Green v. County School Board*, 391 U.S. 430 (1968) [hereinafter cited as *Green*], *Swann* and *Davis* and traditional educational goals. The crippling effects of segregation on the perceptions and motivations of school children both formed the basis for this Court's conclusion that "black" schools and "white" schools were inherently unequal and undergird one of the classic goals in education, *i.e.*, the development of attitudes and values in the preparation of children for good citizenship and effective participation in a biracial community. From a view of the realities in the Richmond metropolitan area, however, it is all too apparent that from 1954 through the trial below, resistance to integration has produced an incalculable degree of deliberate harm to many thousands of children born subsequent to *Brown I*, has drastically compounded the task of disestablishment and has precluded the eradication of the evils of segregation which cannot now be accomplished absent the interdivisional assignment of the area's students.

II.

While the foregoing circumstances are fully supportive of the district court's action, it is submitted that in a number of crucial areas, the court of appeals utilized rationale which

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is irreconcilable both with decisions of this Court and with those of other federal courts in related cases.

In requiring, as a prerequisite to the relief decreed, a demonstration of invidious purpose or racial motivation in the establishment or maintenance of the existing school boundaries, the appeals court employed a standard which has been expressly rejected by this Court in *Emporia* and *Scotland Neck*. Even if, as the court of appeals suggests, there must have been a finding that racial considerations entered into the continued maintenance of school division lines, the district court properly drew such inferences based on a variety of evidence to which the appeals court apparently assigned no importance.

More significantly, the standard espoused by the court of appeals in sanctifying the existing school boundaries in the Richmond metropolitan community exposes a complete disregard of the school desegregation guidelines previously established by this Court. The application of such a standard effectively emasculates the directives of *Brown I*, *Brown II*, *Green*, *Swann* and *Davis* and would insure the preservation of racially separate schools in the Richmond area for the foreseeable future.

Furthermore, in reaching such a result, the court of appeals departed significantly from the established standard of appellate review in school desegregation cases in making new findings based on its own interpretation of the evidence below.

Finally, it is clear that, unlike the court of appeals here, other federal courts both prior and subsequent to the decisions of this court in *Emporia* and *Scotland Neck* have used "effect-oriented" tests in determining the proper scope of a district court's remedial powers. Other fundamental variances in approach as between the decision of this and other courts of appeals in related cases are likewise demon-

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strative of the generally erroneous legal basis upon which it reversed the decree of the lower court.

ARGUMENT

I.

The District Court Neither Exceeded Its Powers Nor Abused Its Discretion In Approving A Desegregation Plan Involving The Assignment Of Pupils Across Existing School Division Lines

A.

In Light Of The Evidence Presented, The Relief Decreed Resulted From A Sound Application Of The Remedial Guidelines Previously Established By This Court

In recognition of the complexities involved in the transition from state-mandated dual school systems to ones free of the effects of racial discrimination, this Court in 1955 instructed the district courts to rely upon the breadth and flexibility inherent in their equity jurisdiction in order to mold effective relief:

> In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. . . . To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in [*Brown I*]. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

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II, 349 U.S. at 300 (footnotes omitted). At the same his Court also recognized that the revision of school ts and attendance areas might well be required in to provide effective relief" and in 1971 reiterated the ty for such action in appropriate cases:

> O]ne of the principal tools employed by school planners nd by courts to break up the dual school system has een a frank—and sometimes drastic—gerrymandering school districts and attendance zones. . . . More often an not, these zones are neither compact nor contigu-s; indeed they may be on the opposite ends of the city. s an interim corrective measure, this cannot be said be beyond the broad remedial powers of a court.

, 402 U.S. at 27 (footnote omitted).

Court again in *Swann* recognized the drastic nature relief that might be required: "The remedy for such ation may be administratively awkward, inconveni-nd even bizarre in some situations and may impose s on some; but all awkwardness and inconvenience be avoided in the interim period when remedial ad-nts are being made to eliminate the dual school s." *Swann*, 402 U.S. at 28.

oth *Green* and *Davis* this Court made it abundantly hat district courts were required to consider all avail-otions and alternatives in selecting a plan of desegre-which realistically offered the greatest promise of

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Court, in addressing itself to the necessity for good faith nce with the mandates of *Brown I* at the earliest practicable ted that

> . courts may consider problems related to . . . revision of hool districts and attendance areas into compact units to hieve a system of determining admission to the public schools a nonracial basis, and revision of local laws and regulations hich may be necessary in solving the . . . problems.

I, 349 U.S. at 300-01.

effectively eliminating all vestiges of a dual school system.[55]

Though disavowing any constitutional right to racial balance, this Court in both *Swann* and *Davis* reaffirmed that the district court or school authorities should make every effort to achieve "the greatest possible degree of actual desegregati " and in the former case established that in a historically segregated system a presumption arose against any schools which were substantially disproportionate in their racial composition.[56]

The cardinal guideline for school authorities and district courts alike is to be found in the repeated assertions in *Brown II, Green, Swann* and *Davis* that any proposed plan is to be judged by its effectiveness through evaluation in practice, and that new plans are required if in reality the objective in achieving actual desegregation is not attained. As was stated in *Green:*

> *[t]he obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in*

[55] Green, 391 U.S. at 439; Davis, 402 U.S. at 37. Regarding the techniques to be employed in the construction of equitable remedies generally, this Court likewise has been clear in stating that the duty of a court is to fashion a remedy which not only eradicates the effects of past evils, but also insures the prevention of the continuation or repetition of discriminatory practices in the future. Louisiana v. United States, 380 U.S. 145, 154, 156 (1965). That this doctrine is particularly applicable in school desegregation cases is evidenced by a parallel drawn in *Green* between techniques appropriate in remedying illegal school segregation and those utilized in various antitrust cases. Green, 391 U.S. at 438 n. 4. It should be noted that in the area of antitrust remedies, this Court has been careful to point out that in order to be entitled to relief, the complaining party need only show that the existing decree leaves a substantial likelihood that the practice condemned has not been satisfactorily eliminated. United States v. E. I. duPont DeNemours & Co., 366 U.S. 316, 331-32 (1961). It is thus reasonable to assume that this Court in determining the appropriate scope of relief in a desegregation case, saw the need for decrees which would not only insure the eradication of all the vestiges of the past unlawful segregation, but also to the extent feasible preclude the revival of such effects.

[56] Swann, 402 U.S. at 26; Davis, 402 U.S. at 37.

achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. *The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness.* Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief. Of course, the availability to the board of other more promising courses of action may indicate a lack of good faith; and at least it places a heavy burden upon the board to explain its preference for an apparently less effective method. Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed. . . .

. . . As Judge Sobeloff has put it,

> "'Freedom of choice' is not a sacred talisman; it is only a means to a constitutionally required end—*the abolition of the system of segregation and its effects.* If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end. The school officials have the continuing duty to take whatever action may be necessary to create a 'unitary, non-racial system.'" . . .

Green, 391 U.S. at 439-40 (citations omitted) (emphasis added).

Since *Brown II* this Court has placed primarily reliance on the district courts to formulate effective relief, recog-

nizing that their proximity to and familiarity with local conditions places them in a better position to perform the required judicial appraisal of the relative effectiveness of proposed methods of relief.[57] Significantly, this Court has not found that any district court has exceeded the breadth and scope of its remedial powers in fashioning meaningful relief from the invidious effects of school segregation. Nor has this Court held any school system to be unitary in the face of a viable, feasible alternative holding greater promise for the attainment of the desired objective.

In this case the district court predicated the relief decreed on the foregoing remedial guidelines calling for the elimination of all vestiges of a system of dual schools by the most effective alternative or plan available under the facts and circumstances presented.[58] In the judgment of the lower court, these mandates required it to consider the totality of a myriad of factual circumstances fully established by largely uncontradicted evidence; and in this perspective, a number of these factors, the most significant of which are discussed below, led the district court to conclude that its remedial powers were not restricted by the existing school division lines.

1.

Interdependence Between Richmond, Henrico and Chesterfield and the Inevitable Effects of Such Mutual Dependency on Community and Student Perceptions

The evidence established, in the judgment of the district court, the conclusions reached by all independent consultants who had studied the three political subdivisions involved, *i.e.*, the existence of a strong economic, cultural and social

[57] *See, e.g.*, Brown II, 349 U.S. at 299; Swann, 402 U.S. at 28; Emporia, 92 S.Ct. at 2205.

[58] See note 11 *supra*.

erdependence and community of interest between the City Richmond and the Counties of Henrico and Chesterfield, lack of any distinctive geographical features dividing the ee jurisdictions, and, indeed, the artificial, confusing and nsitional nature of the boundaries which do exist (Pet. A. 2-16).

Expert testimony from southern educators[50] as well as the trict court's own intimate knowledge of local conditions it to conclude that even though students attending schools the Richmond metropolitan community would prepare citizenship and pursue their vocational, cultural and so- l goals in a community with a historically stable racial nposition of approximately two-thirds white and one-third ck, that, absent assignments across the existing school ision lines, these school children would be attending ntifiably black schools in the City and white schools in two surrounding Counties (Pet. A. 436, 469-74). The trict court accepted the detailed reasons given by these erts as to why the invidious effects of segregation on dent perceptions and motivations could not be eradicated the Richmond metropolitan community without the as- nment of pupils across the existing school division lines t. A. 477-78).

This established interdependence thus serves to accentuate reasonableness of assigning students throughout the tropolitan area since, in the words of one educational ert, they would be "living [a] lie" if otherwise confined chools with racial compositions grossly disproportionate hat of the over-all community (A. 375). Additionally, en this mutual dependency is viewed in terms of such ctices as the failure of either County to permit low cost sing or their discriminatory hiring policies regarding

[50] See pp. 84-86 *infra*.

public jobs, it becomes quite clear that the effects of such policies can and have caused an impact beyond the confines of any one of the jurisdictions in the Richmond metropolitan area.

2.

Proof Establishing Lack of Overriding Interest in Maintaining Existing School Division Lines or in Limiting the Assignment of Pupils to Schools Within the Political Subdivision Where They Reside

The district court's finding that there was no overriding State interest in the maintenance of existing school division lines as inviolate was rooted in proof of the history of previous treatment of these boundaries on the part of the State and local school authorities and the abundance of State law and policies permitting and encouraging both the creation of school divisions consisting of more than one political subdivision and interdivisional student assignments.

A plethora of evidence showed the State's complete disregard of both political subdivision and school division lines with respect to the assignment of pupils in establishing, maintaining and perpetuating segregation for many years after *Brown I* (Pet. A. 193-95, 352-56, 360-64). Existing school division and political boundaries served as no impediment to the creation and State funding of regional schools for blacks consisting of as many as five separate political subdivisions and comprising areas as large as 1,700 square miles, one of which was operated as late as 1968 (RX-86; R. Tr. G-113; Ex. A. 79; Pet. A. 352-56).

As a part of its policy of maintaining segregated schools, the State in 1960 by statute encouraged interdivisional assignments of pupils:

> The General Assembly, mindful of the need for a literate and informed citizenry, and being desirous of advancing the cause of education generally, hereby declares that it is the policy of this Commonwealth to

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encourage the education of all of the children of Virginia. In furtherance of this objective, and to afford each individual freedom in choosing public or private schooling, *the General Assembly finds that it is desirable and in the public interest that scholarships should be provided from the public funds of the State for the education of the children in nonsectarian private schools in or outside, and in public schools located outside, the locality where the children reside;* and that [the localities] . . . should be authorized to levy taxes and appropriate public funds to provide for such scholarships.[60]

Thus with express State encouragement all the defendant school authorities participated in the assignment of pupils across political and school boundary lines throughout the period of tuition grants and pupil scholarships (Pet. A. 328-31), and such lines were similarly disregarded when, to perpetuate segregation, blacks were transported to other school divisions, and, indeed, across State boundaries as well to all-black schools (Pet. A. 330-31, 360-64).

The district court found that neither assignments across existing school division lines nor consolidation, though encouraged for many valid and invalid purposes in the past, had ever been utilized or considered as tools to facilitate the disestablishment of the statewide system of dual schools (Pet. A. 218-19, 278, 281-83).

As early as 1944, the State Board of Education had looked with favor on a long-range plan having as its objective approximately a 50 per cent reduction in the total number of school divisions which necessarily would have required the

[60] Va. Code Ann., § 22-115.29 (Repl. Vol. 1969) (emphasis added). Although this and accompanying laws regarding the use of tuition grants and pupil scholarships to perpetuate illegal school segregation were declared unconstitutional in *Griffin v. State Bd. of Educ.*, 296 F.Supp. 1178 (E.D. Va. 1969), the quoted statute has never been expressly repealed by the State legislature. The pupil scholarship program was not officially terminated until June 30, 1970 (Pet. A. 328).

disregard of many of the existing school division lines then coterminous with political subdivision lines as well as the grouping of then existing separate political subdivisions into single school divisions (Pet. A. 271). In fact, minutes of a 1969 meeting of the State Board reflected its viewpoint regarding consolidation of smaller school divisions as follows:

> The State Board . . . has favored in principle the consolidation of school divisions with the view to creating administrative units appropriate to modern educational needs. The Board regrets the trend to the contrary, pursuant to which some counties and newly formed cities have sought separate divisional status based on political boundary lines *which do not necessarily conform to educational needs.*

(RX-82, 20; R. Tr. F-127, 138-39; Ex. A. 63) (emphasis added).

The district court further predicated its conclusions as to the lack of any compelling interest in maintaining existing school division lines on the existence of a State statute which for many years had given unfettered discretion to the State Board of Education to divide the State into school divisions consisting of more than one political subdivision,[61] other sections of State law enacted in 1954 detailing the method of operation of school divisions consisting of more than one political subdivision,[62] and another provision which expressly

[61] Va. Code Ann., § 22-30 (Repl. Vol. 1969) (Pet. A. 607). During the pendency of the proceedings below, however, a new statute became operative which divested the State Board of the power to act alone in so dividing the States' school divisions. Va. Code Ann., § 22-30, as amended (Cum. Supp. 1972) (Pet. A. 617). See note 51 *supra.*

[62] Va. Code Ann., §§ 22-100.1, -100.12 (Repl. Vol. 1969) (Pet. A. 608-13). Slight amendments to these provisions pursuant to the July 1, 1971 constitutional revision failed to alter the substance of the 1954 statutes. See Va. Code Ann., §§ 22-100.1, -100.3 through -100.11 (Cum. Supp. 1972) (Pet. A. 618-21); see also note 51 *supra.*

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thorized the operation of joint schools by separate political bdivisions in accordance with rules and regulations promul-ted by the State Board of Education[63] (Pet. A. 355).

The lower court's conclusion that existing lines were not violate was further supported by an abundance of expert stimony that as applied to the Richmond metropolitan ea, the existing school division lines served no educational rpose, rendered effective desegregation impossible, and at the continued maintenance thereof would result in the nial of equal educational opportunity in the Richmond etropolitan area[64] (Pet. A. 231, 258, 469-78).

3.

The Further Entrenchment of the Dual School System and the Containment of Blacks Since Brown I

It was not until 1970, sixteen years after *Brown I*, that e first significant effort was made to disestablish the state-andated dual school system in Richmond, Virginia. This riod from 1954-1970 saw the further entrenchment of the al school systems in each of the three political subdivisions th the long range debilitating effects attendant thereto sulting in large measure from the overt defiance to the andates of *Brown I* and *Brown II*, the continuing discrimi-tion at the federal, state and local levels in housing and ner areas, and the concentration within the City of all blic and rent subsidized housing occupied overwhelmingly blacks.

As the district court found, the effect of the operation of all inferior all-black schools in the Counties through the e 1960's, the refusal of the Counties to authorize and per-

[63] Va. Code Ann., § 22-7 (Repl. Vol. 1969) (Pet. A. 607). The te Board minutes of May, 1946, reflect a detailed set of regula-ns developed for the operation of joint schools by counties and es (RX-82, 4-7; Ex. A. 57).

[64] See pp. 84-86 *infra*.

mit low cost housing within their boundaries, and their blatant discrimination in public employment, had the foreseeable consequence of deterring the movement of blacks to the Counties (Pet. A. 195-211, 380-82, 392). School site selection and construction through the 1970-71 school year corresponded to and was superimposed upon the segregated residential housing patterns within the three localities as a result of the school authorities' continued adherence to neighborhood zoning irrespective of its effects on the process of desegregation[65] (Pet. A. 203-11).

4.

Accentuation of the Gross Racial Disparities Since 1954 Attributable In Part to State and Local Discrimination Through 1971

During the sixteen-year period from 1954 to 1970, characterized by the continuous utilization of practices designed to frustrate the process of school desegregation, the student racial composition of the City system changed from 56 per cent white to 66 per cent black, notwithstanding the 1970 annexation which produced an influx of more than 8,000 students, 97 per cent of whom were white. Over the same period of time, the student racial compositions of the rapidly growing contiguous suburban communities of Chesterfield and Henrico had changed from 20 and 10 per cent black respectively to 9 and 8 per cent black. The number of black students in the City had increased from 15,000 to 30,000 with the result that 85 per cent of the blacks in the Richmond metropolitan area attended schools in the City. The combined racial composition within the three school divisions, however, had varied less than one-tenth of one per cent in the decade from 1960 to 1970.

The district court found that discriminatory practices and policies in education, housing and employment had facili-

[65] See pp. 44-47 and note 48 *supra*.

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ated the further entrenchment of the dual school systems, ad contributed in part to the acceleration of the racial isparities between the City and County systems, and had endered the process of disestablishment more difficult[66] Pet. A. 212-22, 237, 478-514).

5.

Failure of the Three School Divisions Involved to Establish Unitary Systems by June, 1971

The open hostility of the County school authorities to any ntegration and the continued operation by all three school ystems of black and white schools clearly identifiable as such y reference to student population and/or faculty member- hip through the school year 1970-71 has been summarized reviously at pp. 37-43 *supra*. Thus, at the time of the hear- gs below all three systems were in the process of imple- enting either court-ordered or HEW-induced plans of de- egregation—required as a result of their persistent denial f equal educational opportunity and, like other recent cases resented to this Court,[67] a condition justifying the continued xercise of the district court's remedial power.

6.

White Attrition in City Schools and the Foreseeable Effects Thereof

The first significant attempt to desegregate Richmond hools occurred in the 1970-71 school year with the imple- ntation of the "Interim Plan" which was accompanied an exodus of more than 3,000 or 15 per cent of the City's tal white student population. This loss represented a 300

[66] This conclusion on the part of the district judge is quoted more ly at p. 35 *supra*.

[67] *E.g.*, Emporia, 92 S.Ct. 2196; Scotland Neck, 92 S.Ct. 2214; ann, 402 U.S. 1.

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per cent increase in white attrition over previous years. Twelve months later the desegregation plan modeled upon the principles enunciated in *Swann* produced another exodus of more than 3,000 white students. Thus, Richmond sustained a loss of more than a third of its white students within a 12-month period involving two school openings.

The district judge concluded that this massive withdrawal from the City system foreshadowed an all-black system within the foreseeable future and that the process of increasing polarization was immeasurably facilitated by the existence of the two virtually all-white school systems surrounding the City (Pet. A. 207-10). Judge Merhige thus concluded that effective relief could not be afforded within the limits of the City of Richmond and that the assignment of pupils across the existing school division lines was essential to the complete disestablishment of the state-mandated and perpetuated dual school system (Pet. A. 201). These conclusions were amply supported by expert testimony predicting the utter frustration of the promises of *Brown I* and the certainty that black students for the foreseeable future could only look forward to attending substantially all-black City schools ringed by virtually all-white suburban schools[68] (Pet. A. 469-78).

7.

The Presentation of a Desegregation Plan Promising Realistically to Eliminate All Vestiges of the Dual School System

Both the Richmond School Board's motion to compel joinder of parties needed for just adjudication and the plaintiffs' amended complaint envisioned a metropolitan desegregation plan wherein assignments of pupils would not be restricted by the existing school division lines. The plaintiffs sought relief by either the merger of the Richmond, Henrico

[68] See pp. 84-86 *infra*.

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Chesterfield school divisions or through the develop-
of a court-approved plan for the exchange of pupils
een the three separate divisions.

e State and County defendants failed to offer any
sed modifications or alterations to the plan submitted
e City School Board nor did they submit any other
despite adequate time and invitations to do so from
istrict court and the Richmond Board as well. The
ct court's order of January 10, 1972, which gave rise
s petition provides the State defendants with an abiding
rtunity to seek modifications and alterations to the ap-
d plan (Pet. A. 541).

nificant features of the metropolitan desegregation plan
been detailed previously at pp. 47-53 *supra*. The lower
found the plan to be educationally sound and its imple-
ation reasonable, feasible and workable (Pet. A. 428,
. The district judge, based on evidence presented, con-
d that the metropolitan plan offered vastly superior
ects for effective relief in that it would insure: (1) the
cation of all vestiges of the dual system of schools
gh the removal of the racial identifiability of all fa-
s in the Richmond metropolitan area; (2) the aboli-
of the County systems as white havens facilitating the
er resegregation of Richmond schools; and (3) the
nation of the extreme racial disparities between the
and County systems (Pet. A. 239-40, 418-35).

rther buttressing these findings was the testimony of
ern educators who, based on their substantial experi-
in desegregation efforts, were convinced that the plan
d provide long-range stability (A. 243, 381, 432). In
of the static racial composition of students attending
mond, Henrico and Chesterfield schools (from 1960 to
, the combined systems had been approximately 65 per
wh. e and 35 per cent black), these witnesses reaffirmed

the educational advantages in achieving a racial composition within each school which would not be substantially disproportionate to the racial composition of the entire school community (A. 242-43, 373-77, 432-34). They endorsed the preliminary estimates of variances in each school ranging from 17 to 40 per cent black as accomplishing this objective. Testimony from an eminent sociologist who specialized in race relations indicated that the suggested range approximated the optimal racial compositions which have produced the most effective integration.[69]

SUMMARY

Under the remedial guidelines established by this Court, the district court clearly had the following duties: (1) to consider all available options and alternatives designed to

[69] In testifying as to the general characteristics of meaningful integration in public education, this witness further explained the interrelationship between over-all percentages of black student enrollment and participation in the various activities of any particular school (A. 273-74). His conclusions as to effective integration were supported by a Chesterfield exhibit which, although introduced for a different purpose graphically illustrated the educational advantages of meaningful integration as opposed to racial sprinkling or isolation. The general extra-curricular activities for six Chesterfield high schools were listed showing participation therein by race. The racial composition of the schools ranged from 3 per cent to 44 per cent black. Increasing levels of black student enrollment revealed a corresponding rise in the number of integrated activities as follows:

School	*Black Enrollment*	*Number of Integrated Extra-Curricular Activities*
Meadowbrook	3%	11 of 38
Manchester	5%	14 of 24
Midlothian	7%	28 of 28
Thomas Dale	11%	30 of 37
Grange Hall	34%	10 of 13
Matoaca	44%	13 of 13

(CX-32; A. 1025; Ex. A. 131).

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eliminate all vestiges of the area's dual school system which, of course, included the plan submitted by the Richmond School Board; (2) to weigh the relative effectiveness of desegregation efforts then under way in the City and Counties as against the greater promises inherent in the Richmond School Board's plan; and (3) to select the alternative providing for the greatest amount of actual desegregation and offering the most realistic chance of working in actual operation. Considering these duties in light of the diverse factual circumstances noted above which attested to the soundness of the proposed metropolitan desegregation plan, it is abundantly clear that the district court was compelled to order the relief ultimately decreed.

B.

THE EFFECTIVENESS OF RELIEF IN DE JURE METROPOLITAN AREAS SHOULD NOT BE MADE DEPENDENT UPON THE MANNER IN WHICH A STATE HAS ELECTED TO ALIGN ITS LOCAL SCHOOL DIVISIONS

As noted previously, considerable variances exist among the several states with respect to school division alignments. In Virginia, North Carolina and Alabama, states with a history of state-mandated systems of segregated public schools, there is no uniformity in the interrelationship between school division and political subdivision lines.[70] In

[70] In other de jure states, school district lines do not necessarily coincide with political subdivision boundaries. *See, e.g.*, United States v. Texas, 321 F.Supp. 1043 (E.D. Tex. 1970), *aff'd*, 447 F.2d 441 (5th Cir. 1971), *cert. denied*, ... U.S. ....., 92 S.Ct. 675 (1972); Haney v. County Bd. of Educ., 410 F.2d 920 (8th Cir. 1969). Nor do school boundaries conform to political subdivision lines in other areas currently involved in school desegregation litigation. *See, e.g.*, Bradley v. Milliken, Nos. 72-1809, -1814 (6th Cir., Dec. 8, 1972), *vacated for rehearing en banc*, (Jan. 16, 1973); United States v. Board of School Comm'rs. of City of Indianapolis, 332 F.Supp. 655 (S.D. Ind. 1971), *aff'd*, No. 72-1031 (7th Cir., decided Feb. 1, 1973).

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Charlotte, North Carolina, and Mobile, Alabama, each respective school district includes the urban core city along with the surrounding suburban county. The cities themselves are but a part of a larger political subdivision which encompasses the entire metropolitan area involved. On the other hand, Virginia is unique in that Richmond and, indeed, all of its cities are separate political subdivisions which under State law have the right to operate separate school systems.[71]

In all three cities mentioned, the overwhelming percentage of black citizens live within the city limits ringed by substantially all-white suburban areas.

In upholding the district court in *Swann*, this Court approved a desegregation plan projecting a racial composition under which substantially all schools in the Charlotte-Mecklenburg metropolitan area would range from 9 to 38 per cent black. *Swann*, 402 U.S. at 9-11. In *Davis*, this Court rejected attempts by Mobile school authorities to rely upon a natural geographical barrier as a means of effectively confining the majority of black students in that metropolitan area to substantially all-black schools in the core city. In both Charlotte and Mobile, the racial compositions of individual schools now bear a reasonable relationship to the over-all racial composition of the entire metropolitan school population.

In the Richmond metropolitan community, however, 85 per cent of all the black students are presently confined to

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[71] This States' internal arrangement of its political subdivisions is unusual for instance, in that a single county may completely surround a separate city, *see, e.g.*, *Emporia*, 92 S.Ct. 2196, or a single metropolitan area may be subdivided into multiple political jurisdictions as is the case here where the City of Richmond is completely surrounded by the two separate counties of Henrico and Chesterfield.

Furthermore, as this Court has noted, the independent political subdivisions in Virginia have a right under state law to operate their own school systems. Emporia, 92 S.Ct. at 2199 n. 5, *citing* Va. Code Ann., § 22-93 (Repl. Vol. 1969) (case citation omitted).

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schools within the City system ringed as it is by the two County systems each of which is more than 90 per cent white.

The district court found that, viewed in its metropolitan setting, the Richmond school system was clearly identifiable as black and those of Henrico and Chesterfield as white (Pet. A. 201), and that additional white attrition from the Richmond system facilitated by the close proximity of the substantially all-white County systems could reasonably be anticipated (Pet. A. 209-10).

Though conceding that the evidence indicated the workability of the racial compositions envisioned in the City School Board's metropolitan desegregation plan (Pet. A. 570), the court of appeals nevertheless held that in its concern for effective relief, the district court had exceeded its powers in ordering the implementation of the plan in the absence of a specific finding of invidious racial motive or intent in the establishment or maintenance of the existing school division lines (Pet. A. 580-81). Absent such findings, the court of appeals held in effect that the tenth amendment permitted Virginia to adhere to its particular scheme of school division alignment even though a more effective plan for the elimination of all the vestiges of the dual system of schools in the Richmond metropolitan area was thereby precluded.

In having thus sanctioned the maintenance of virtually all-black and all-white school systems in the Richmond metropolitan community with its history of de jure segregation in public education, the court of appeals has implicitly approved less effective relief based solely on the manner in which this State has chosen to align its school divisions. Because, in that court's view, school boundary lines must conform to the three political subdivisions in the Richmond metropolitan area, patterns of school segregation, racially identifiable schools and inherent educational inequalities

eliminated in the Charlotte and Mobile metropolitan areas are allowed to persist in this community.

Thus, the marked polarization of black and white children attending schools in the Richmond metropolitan area serves as the antithesis of the effective integration which, owing to the implementation of school desegregation plans approved by this Court, enjoys current vitality in similar metropolitan areas. This bizarre result stems from a sanctity accorded existing state-created lines not permitted in cases where other fourteenth and fifteenth amendment rights have been involved.[12]

The constitutional basis commending the rationale employed by the court of appeals thus must be questioned. Clearly the application of the tenth amendment fails to justify such a result; instead, in severely limiting the district court's remedial powers, it serves only as a resurrection of echos from the past when it was unsuccessfully invoked by the State of Virginia as a basis for interposition as well as a host of other laws and policies used in flouting *Brown I*.

Though the state is the relevant unit of equality under the fourteenth amendment, the degree of effectiveness of relief within a particular geographical area of a state should rest upon the feasibility of viable alternatives available and not upon the happenstance of variances in school division alignment.

Contrary to the view of the court of appeals, it was not asked to compel one of the states to restructure its internal government for the purpose of achieving racial balance (Pet.

[12] This Court has steadfastly refused to allow political subdivision or any other state-created lines to control the effective exercise of fundamental constitutional rights unrelated to school desegregation. *E.g.*, Reynolds v. Sims, 377 U.S. 533 (1964) (legislative district lines); Wesberry v. Sanders, 376 U.S. 1 (1964) (congressional district lines); Gomillion v. Lightfoot, 364 U.S. 339 (1960) (political subdivision lines).

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A. 562). No party has asserted any constitutional right to racial balance; rather it is the right, to the extent feasible, to effective relief from the invidious and persistent denial of equal educational opportunity which prompted the relief decreed in the district court. Certainly it is neither unfair nor unreasonable to require those who perpetuated the wrong to implement a plan of feasible relief which the lower court found to offer the only realistic promise for success in effectively eliminating the racial identifiability of all Richmond area schools through the removal of all vestiges of the dual school system. The extensive variances in school division alignment throughout the several states not only establish that no one form is crucial, but also demonstrate the incongruity inherent in regarding such lines as a limitation on the equitable remedial discretion of the district courts.

Since the statewide system of dual schools was the evil struck down in *Brown I*, it would indeed be ironical if one of the guilty and recalcitrant states could in fact effectively segregate thousands of its black school children owing to a fortuitous alignment of school divisions regardless of the existence of feasible and viable alternatives.

C.

JUSTICE REQUIRES THAT THE MEANS OF DISESTABLISHMENT SHOULD BE AT LEAST COEXTENSIVE WITH THOSE USED TO ESTABLISH AND PERPETUATE THE STATEWIDE SYSTEM OF DUAL SCHOOLS

A major portion of the proceedings below consisted of the extensive development by largely uncontradicted evidence of the practices and methods utilized by the State and local school authorities in both the establishment and the post-*Brown I* perpetuation of a dual system of schools, and of their reluctant and incomplete efforts in eradicating the vestiges thereof up to the time of the hearings below. All of the devices and means, both ingenious and ingenuous,

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employed in vain, yet harmful attempts to defy, circumvent and delay the realization of the promises of *Brown I* and *Brown II* were detailed in full. Accordingly, this evidence and its own considerable experience in school desegregation cases in Virginia compelled the district court to reject the pleas of the State and County defendants concerning this State's allegedly historical tradition of local autonomy in school operations, and their opposition to assignments across existing school boundaries and to the consolidation of the three school divisions.[73]

During this all too recent period, the State, for the purpose of perpetuating segregation, not only without objection but with the encouragement of the Counties, assumed all control over the assignment of pupils and, in some instances, the complete operation of local public schools—which attributes are now alleged to be the hallmarks of the so-called historical tradition of local autonomy in the operation of Virginia's public schools ((Pet. A. 575-76). For decades the State encouraged consolidation of separate school divisions and the operation of joint schools for all educational objectives, save desegregation. Years ago the Virginia legislature established a detailed framework for the operation of school divisions consisting of more than one political subdivision,[74] though obviously with no view of utilizing this procedure as a tool in the dismantling of dual school systems.

The State with the concurrence of local school authorities employed principles of consolidation in establishing regional schools for blacks which operated as late as 1968, and many local school boards including the defendants herein for many

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[73] The district court also made specific findings regarding the racial hostility which underlay the opposition to the use of such obvious techniques on the part of the State and County officials (Pet. A. 212, 230-31). See pp. 97-100 *infra*.

[74] See note 51 *supra*.

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years engaged in the joint operation of special educational facilities which of necessity required the daily crossing of the existing school division lines; however, neither the State nor local school authorities have ever recommended that these techniques be employed for the purpose of disestablishing the system of dual schools. Rather, the assignment of students across existing school division, political subdivision, and, indeed, State lines was encouraged, financed and required of thousands of pupils by the State and local authorities for the sole purpose of perpetuating segregation.[75]

The desegregation plan presented by the Richmond School Board and approved by the district court involved the assignment of pupils across existing school division lines and the utilization of the legislatively conceived plan for the operation of a consolidated school division—the same tools and principles utilized by the same school authorities in establishing a system of segregated schools and in maintaining and perpetuating it for years after *Brown I*.

It is apparent that the district court deemed such long-standing utilization of these devices and principles for both valid and invalid purposes as affording a rational basis for requiring the defendant State and local authorities to exer-

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[75] The district court specifically cataloged a group of "[e]arlier judicial opinions [which bore] witness to Virginia's policy permitting the transportation of pupils across political subdivision lines for the purposes of maintaining segregation" (Pet. A. 194) *citing* Buckner v. County School Bd., 332 F.2d 452 (4th Cir. 1964); School Bd. of Warren County v. Kilby, 259 F.2d 497 (4th Cir. 1958) (where Warren County's maintenance of only one high school which was restricted to whites caused it to transport some of its Negro children of high school age 50 miles daily to a facility in adjoining Clarke County and others over 50 miles one way to a distant high school for Negroes in Prince William County where they were required to stay for five days of the week, being boarded at public expense); Corbin v. County School Bd., 177 F.2d 924 (4th Cir. 1949); Goins v. County School Bd., 186 F.Supp. 753 (W.D. Va. 1960) (involving daily transportation of Negro high school students from residences in Grayson County to location in Wythe County for one-way distances ranging from 30 to 40 miles).

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cise the powers which they now have under State law in providing for the complete and effective desegregation of all schools in the Richmond metropolitan community:

> [I]nstances . . . of the education of pupils of one political subdivision in schools run in whole or in part by officials of another demonstrate as a matter of historical fact the insubstantiality of any argument that strong state concerns support their maintenance as barriers to the achievement of integration. *For the State has countenanced much more than the plaintiffs seek here.* Standard practice has encompassed schemes under which students are educated in systems financed and operated by local officials wholly irresponsible, in the political sense, to residents of the students' home area. Centrally-enforced uniformity in certain educational practices has no doubt helped to make this acceptable. But here the plaintiffs do not demand that desegregation take place by means that render school authorities politically irresponsible to the parents of the children they teach. Means are available, such as the consolidation form presented in Virginia law, by which representatives of each political subdivision will have a role in management of a combined school system. Flexible state law provisions for financing exist as well. *The State cannot insist that compliance with its own statutory policy violates some substantial interest.* This is so especially in the light of the recurrent successful use of the joint system of school management, which entails the operation of facilities by a committee of control, having representatives from participating school divisions, with financing provided by the political bodies of each.

(Pet. A. 194-95) (emphasis added).

In view of its silence in this area, however, it can only be inferred that in the judgment of the court of appeals such past conduct was irrelevant in determining the scope of the remedial powers of the lower court.

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This court as early as 1955 in *Brown II*, 349 U.S. at 299-301, recognized the extreme complexity of the problems involved in the dismantling of state-mandated dual school systems, and that imaginative and, indeed at times, drastic measures might well be required. The record herein fully establishes, however, that the State of Virginia has taken no affirmative voluntary actions, much less drastic or imaginative ones, to dismantle its dual system of schools (Pet. A. 212-22, 332-52). In light of this State's abdication of its affirmative duty to take whatever steps might be necessary to eradicate all vestiges of its dual system of schools,[76] simple justice compels the approval of the district court's action in molding its decree to meet the exigencies of the case through a utilization of means and methods at least coextensive with

[76] As of January 15, 1971, the State defendants were still expressly denying the existence of any such affirmative duty (A. 113-16) and their position throughout the trial was that the basic responsibility lay with the local school authorities (A. 678-93). Certainly, at this late date, however, the existence of such a duty on the part of state school authorities is abundantly clear. *E.g.*, Smith v. North Carolina State Bd. of Educ., 444 F.2d 6 (4th Cir. 1971); United States v. Texas, 321 F. Supp. 1043 (E.D. Tex. 1970), *supplemental order* of April 19, 1971 (unreported), *modified and aff'd*, 447 F.2d 441 (5th Cir. 1971), *cert. denied*, 404 U.S. 1016 (1972); Godwin v. Johnston County Bd. of Educ., 301 F.Supp. 1339 (E.D. N.C. 1969); Franklin v. Quitman County Bd. of Educ., 288 F.Supp. 509 (N.D. Miss 1968); Lee v. Macon County Bd. of Educ., 267 F.Supp. 458 (M.D. Ala.) (three judge court), *aff'd sub nom.* Wallace v. United States, 389 U.S. 215 (1967); *see* United States v. Jefferson County Bd. of Educ., 372 F.2d 836, 846-47 (5th Cir. 1966), *aff'd en banc*, 380 F.2d 385, *cert. denied*, 389 U.S. 840 (1967).

The court of appeals, although not even alluding to the State's affirmative duty in this case, has belatedly recognized in another context that the local school board in Virginia is but "an arm of the State. . . ." National Socialist White People's Party v. Ringers, No. 72-1737 (4th Cir., decided Feb. 5, 1973) (slip opinion at 3). This Court years ago established that local public school authorities "from the point of view of the Fourteenth Amendment . . . [stood] . . . as the agents of the State." Cooper v. Aaron, 358 U.S. 1, 16 (1958).

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those which have been employed by the State and local officials in the active and continuous perpetuation of illegal discrimination in public education.

The limitations on the remedial power of the district court as imposed by the court of appeals in this case, however, are productive of the following incongruity: the powers of the lower court to insure the removal of all vestiges of a state-enforced dual school system are to be less extensive than were the means utilized by the State and local school authorities alike in perpetuating the denial of equal educational opportunity; and the existence of school division lines which have never served as barriers or impediments to the retention and promotion of segregation in the past, now precludes effective relief in the Richmond community.[77]

The Richmond School Board submits that proof of state support and encouragement of student assignments across political subdivision lines for valid educational purposes as well as for the perpetuation of illegal segregation, the prior use of principles of consolidation both to effectively segregate blacks and for worthy educational purposes as well, and the existence of a legislatively conceived plan for the operation of a school division composed of two or more political subdivisions collectively afford a sound basis for the judicial approval of such techniques as a means of eliminating all vestiges of a system of state-mandated segregation in the Richmond metropolitan area.

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[77] The United States Court of Appeals for the Fifth Circuit has recognized that "[b]arriers which did not prevent enforced segregation in the past" will not be allowed to impede the process of desegregation. Henry v. Clarksdale Mun. Sep. School Dist., 433 F.2d 387, 394 (5th Cir. 1970).

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D.

THE CONTINUING DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY WITHIN THE RICHMOND METROPOLITAN AREA IS ATTESTED BY AN APPLICATION OF THE RATIONALE UNDERLYING BROWN I AND A TRADITIONAL GOAL OF EDUCATION

The inequality inherent in a system of separate education and the deleterious effects on the perceptions and motivations of school children were the predicates underlying the constitutional violation proscribed by *Brown I*. The need for the correction of the harm recognized in *Brown I* also formed the basis for the creation of the affirmative obligation on the part of state and local school authorities to eliminate to the extent feasible the racial identifiability of schools through the eradication of all vestiges of the state-mandated dual school systems.

Since *Brown I*, courts and those educators charged with the responsibility of providing equal educational opportunity to all children have tended to consider the legal obligations imposed as something apart from traditional educational goals. All have been slow to grasp the interrelationship between the affirmative duty to promote the greatest amount of actual desegregation and the fundamental purposes of education. That the legal requirements, however, do in fact parallel the primary objectives of education is amply supported by this record and the findings of the district court. Of equal significance, a view of the operation of schools in the Richmond metropolitan area since *Brown I* in light of these intertwined disciplines provides a vivid example of the incalculable harm which persists today as a result of the deliberate and continuing deferral of quality education and equal educational opportunity to the children in the Richmond school community. Moreover, the application of these educational principles to the situation existing in Richmond

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today is strongly indicative of the means required to bring fulfillment to the promises of *Brown I* and *Brown II*.

The bases for the conclusions that "in the field of public education the doctrine of 'separate but equal' ha[d] no place" and that "[s]eparate educational facilities [were] inherently unequal" *Brown I*, 347 U.S. at 495, were the same intangible yet vital considerations underlying earlier decisions condemning segregation in higher education:

> Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

Brown I, 347 U.S. at 494. This Court then quoted with approval from the opinion of the Kansas case then before it:

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

Brown I, 347 U.S. at 494 (footnote omitted).

Prominent southern educators experienced in the area of school desegregation established during the trial below the nature in which such effects on perceptions and motivations underlay one of the two basic objectives of public education, *i.e.*, the development of attitudes and values essential to good

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izenship and effective participation in society (A. 369-75, 8-29).

These witnesses expanded upon the previous delineation this Court of the invidious effects of separateness in edu-ion, the benefits to be derived from effective integration d, from purely an educational standpoint, the necessity of minating the racial identifiability of schools to the extent sible as a prerequisite for the preparation of children for in a multi-racial society (A. 372-75, 428-29). All agreed t from an educational standpoint the development of itudes and values as a purpose of public education was ually important as and inextricably interwoven with the er acknowledged purpose of education, namely, the teach- of academic skills (A. 371, 428-29). They were in com-te agreement that in a biracial community such as the chmond metropolitan area meaningful integration to the ent feasible was an essential element of quality education d equal educational opportunity and that meaningful in-ration was as vitally important for white students as for ~~in a multi-racial society (A. , ,). All agreed of academic skills (A. , ,). They were in com-~~cks. (A. 243, 432). They also delineated reasons why dents, parents and teachers of both races in the Richmond tropolitan area have historically perceived "black" schools "bad" or "inferior" and "white" schools as "good" or perior" (A. 369-76). These same witnesses explained y the invidious effects of segregation could not be eradi-ed in the Richmond metropolitan area absent the assign-nt of pupils across the existing school division lines. 243, 375-76, 429-30, 434).

The foregoing expert testimony coupled with the findings he district court thus belies the existence of any dichotomy ween legal requirements and fundamental educational ncepts. Though not establishing any new constitutional hts, such testimony and findings from an educational ndpoint support the necessity for and the potential ef-

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fectiveness of the relief decreed if public schools in the Richmond metropolitan area are to prepare children for good citizenship and effective participation in this, a biracial community.[78]

The debilitating effects on the hearts and minds of black children throughout the State of Virginia which flowed from the pre-1954 conduct on the part of State and local school authorities has been well documented in the *Brown* decisions. A summary of this record as it bears on the conduct of these same school authorities since 1954 affords a sound measure of both the continuing nature of the constitutional violation, and the incalculable additional harm inflicted on these school children by virtue of the all-pervasive and deliberate maintenance of separate educational facilities and the concomitant deferral of equal educational opportunity.

The manner in which the post-*Brown* harm compounded the problem of disestablishment is easily perceived. Countless thousands of children have commenced and completed their

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[78] A witness testifying as an educational expert on behalf of the State and County defendants acknowledged his participation in and endorsement of a previous study wherein it was concluded that a merger of the two school systems in the Raleigh-Wake County, North Carolina metropolitan area would be beneficial in that "the schools [were] the basic preparation agent for the community" and that "a single school system would have greater capability for responding to the challenges of the urbanizing community" (RX-93, 3; A. 1114-16; Ex. A. 149). This witness further acknowledged making observations in that study to the effect that

> school children of one district deserve the same educational opportunities as children of the other district. Educational opportunities for children and youth should not be dependent on where they happen to reside within Wake County. Wake County and Raleigh compromise [*sic*] a unified socioeconomic cultural area. Many children and youth educated in the Wake County schools will eventually live and work in Raleigh. The concern of Raleigh citizens for the education of these county children and vice versa should be a very practical one.

(A. 1119).

formal education in the public schools of the Richmond metropolitan area since 1954. Indeed, a second generation of school children had completed a substantial portion of their formal education by the close of the 1970 school year during which the plaintiffs' motion for further relief was filed—and substantially all had done so in either black or white schools. In fact, in 1970, there were many more thousands of black pupils attending all-black schools in the Richmond metropolitan area than was the case in 1954 (Pet. A. 417-18, 524-32).

Many of these children and their parents witnessed and suffered the consequences of the primary force which this record graphically depicts—the utilization of all State means and resources in open defiance of *Brown I* through the maintenance of policies dedicated to the perpetuation of complete segregation for as long a time as possible, and thereafter to the minimization of integration in every conceivable manner.

Beginning with the official action of the State Board of Education in calling for adherence to State law through continued maintenance of segregated schools subsequent to the rendition of the *Brown* decisions, the dismal courses of interposition, massive resistance, recalcitrance and delay were pursued. The highlights include: the repeal of the compulsory attendance laws for the purpose of avoiding any integration; the establishment of tuition grants and pupil scholarships to enable those confronted with any prospect of integration to enter either all-white private schools or to cross political subdivision lines to attend all-white public schools; and the enactment of the Pupil Placement Act, the repeal of which did not occur until 1966. Contrary to the present argument advanced by the State and Counties regarding the historic local autonomy of schools in Virginia, the Pupil Placement Act divested the local school boards of

all authority regarding the assignment of pupils in an attempt to maintain separate schools for blacks and whites. Even though the State's view as to central-versus-local control over schools has thus varied since 1954,[79] one definitive conclusion can be readily drawn from this vacillation: alternating preferences for local as opposed to centralized control have been dictated by the degree to which one or the other best served the perpetuation of segregated public schools.

This State continued to participate in the operation of regional schools for black students serving multiple political subdivisions as late as 1968. The attendance areas for the all-black regional schools encompassed as many as five counties and 1,700 square miles. Indeed, the travel distances to one such facility were so great that black student dormitories were necessitated.

When, in 1965 this State entered into a compliance agreement under the Civil Rights Act of 1964 in order to avoid the cutoff of federal funds, it took the position that desegregation was a primary concern of the local school boards and refused to assert any positive leadership in dismantling the statewide system of dual schools.

The State's most recent contribution in rendering the disestablishment of its dual school systems more difficult concerns the amendment by the legislature during the pendency of this suit of Section 22-30 of the Code of Virginia which had previously granted unfettered power to the State Board

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[79] *Compare* the 1954 statement of the Attorney General of this State at note 35 *supra* to the effect that Virginia's schools had been operated pursuant to a *centrally controlled* plan regarding the maintenance of segregated public schools and the frequent use of other State-level practices such as the closing of integrated schools (Pet. A. 533-36) *with* the trial testimony of one of the State school authorities concerning his view that in the late 1960's when the individual school divisions were forced to desegregate in order to avoid the termination of federal funds, the primary responsibility for such disestablishment lay with the local school authorities (A. 678-93).

of Education to place more than one school division under the operation of a single superintendent. If, prior to the amendment, the State Board had directed such a reorganization of the Richmond, Henrico and Chesterfield school divisions, it is inconceivable, the continuation of separate school boards in each system notwithstanding, that present patterns of segregation in Richmond area schools would have withstood constitutional challenge under *Swann*. The amendment, however, removed the previous power of the State Board to subdivide the State into appropriate school divisions by requiring that any placement of more than one political subdivision into a single division henceforth could be accomplished only with the consent of the school boards and the governing bodies of each of the political subdivisions to be affected.[80]

Finally, perhaps the greatest factor compounding the post-*Brown* evils and rendering disestablishment even more difficult was the continued use through the school year 1970-71 by the State and local school authorities of pre-1954 policies dealing with school site selection and construction to the end that schools built for one race or another served attendance zones that were superimposed over segregated housing patterns. Construction programs carried out through 1970 and 1971 in Richmond, Henrico and Chesterfield had as their purpose and effect the perpetuation of segregation by race. No school site has ever been selected by any of the jurisdictions for the purpose of assisting in the process of desegrega-

[80] The statutory change was prompted by a general revision of the State's constitution which, however, did *not* require the legislature to restrict the State Board's power to divide the State into school divisions to the degree accomplished under § 22-30, as amended. See § 5(a) of Article VIII of the Constitution of Virginia, as revised (1971) (Pet. A. 15); see also note 51 *supra*.

tion—a fact one county school official readily admitted (A. 494). Thus, the evidence in the lower court (Pet. A. 283-313) fully attests to the soundness of this Court's determination in *Swann* that school site selection is a potent weapon for the continued maintenance of segregation.[81] The first step toward substantial desegregation did not occur in the City of Richmond until the 1970-71 school year, and Henrico and Chesterfield, both of which had operated countywide schools for blacks as late as 1968-69 and 1969-70, respectively, were still operating racially identifiable black schools during the 1970-71 school year even though the total black enrollment was 8.1 per cent in Henrico and 9.4 per cent in Chesterfield.

The reasoning of this Court in *Swann* makes it clear that even in a static community the continuation of a policy of superimposing neighborhood schools on segregated residential housing patterns effectively segregates school children. Certainly the continuation of such a process in the Richmond area from 1954 to 1970 had the same effect and severely complicated the task of eliminating the racial identifiability of area schools which was first undertaken in late 1970. Additionally, the growth and demographic changes occurring in the Richmond area during this period undoubtedly served to magnify the injurious effects of the above processes.

Even though the black-white student ratio in the Richmond metropolitan area remained constant, *i.e.*, 65 per cent white and 35 per cent black, the gross racial disparity between the City of Richmond and the two Counties was further accentuated. At the time of *Brown I*, the student population of Richmond was 43.5 per cent black, and Henrico and Chesterfield were 10.4 per cent black and 20.4 per cent

[81] See note 40 *supra*.

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black, respectively. The total enrollment in Richmond grew from approximately 36,000 in 1954 to approximately 43,000 in 1970, but its racial composition was approximately 70 per cent black by June, 1970. Duirng the same period, the number of black students in the Richmond system more than doubled—from approximately 15,000 to approximately 30,000. The significant growth in the student population in the Counties during this period of approximately 37,000 additional white students reduced the percentage of black enrollment in Chesterfield schools from more than 20 per cent black to less than 10 per cent, while Henrico's percentage of black enrollment dropped from 10.4 per cent to approximately 8 per cent. Ironically, in the 1969-70 school year the number of blacks in all-black schools in the Richmond metropolitan area was substantially greater than was the case in 1954.

The involvement of the State Board of Education and the School Boards of the City of Richmond and the Counties of Henrico and Chesterfield in all of the State policies of resistance to integration subsequent to *Brown I* establishes the continuing nature of the constitutional violation requiring relief. Indeed, the constitutional violation giving rise to the relief decreed in *Swann* is not fairly distinguishable from the necessitating relief in the Richmond community. Clearly, the district court was fully justified in its belief that the breadth and flexibility inherent in its equity jurisdiction was more than adequate to prevent the architects and adherents of years of pervasive discrimination from advantaging themselves of their own illegal practices through the effective segregation of thousands of white and black students in the Richmond metropolitan area.[82]

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[82] In this context, the district court concluded as follows:

> In the light of all the evidence the insistence now by school authorities upon a system of separate attendance districts within

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II.

The Decision Of The Court Of Appeals Is Irreconcilable With Applicable Decisions Of This Court And Rationale Utilized By Other Federal Courts In Related Cases

The incompatibility of the opinion of the court of appeals with decisions of this Court manifests itself in three significant areas: the standard for assessing the sanctity of existing school division lines and the existence of a constitutional violation; the drastic limitations placed upon the previous guidelines established by this Court for the shaping of effective relief; and the significant departure from the accepted standard of review in school desegregation cases.

The reasoning employed by the court of appeals is likewise at odds with that of other federal courts which have considered similar issues.

A.

The Test Of The Court Of Appeals For Assessing The Sanctity Of Existing School Division Lines And The Existence Of A Constitutional Violation Is Predicated On A Judicial Standard Expressly Rejected By This Court

It is clear that in evaluating the sanctity of the existing school division lines in this case, the court of appeals as it had done in *Wright v. Council of City of Emporia*, 442 F.2d 570, 572-74 (4th Cir. 1971) and *United States v. Scotland Neck City Board of Education*, 442 F.2d 575, 577, 582 (4th Cir. 1971), focused on the purpose and motivation underlying the establishment and maintenance of such lines in the Richmond metropolitan area:

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the enlarged community reflects the desires of the State's central and local officials, based at least in part on their perceptions of their constituents' wishes, to maintain as great a degree of segregation as possible.

(Pet. A. 201).

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> It is not contended by any of the parties or by amici that the establishment of the school district lines more than 100 years ago was *invidiously motivated*. We have searched the . . . opinion of the district court in vain for the slightest scintilla of evidence that the boundary lines of the three local governmental units have been maintained either long ago or recently for the *purpose* of perpetuating racial discrimination in the public schools. . . .
>
> . . . .
>
> [N]either the record nor the opinion . . . even suggests that there was ever joint interaction between any two of the units involved (or by higher state officers) for the *purpose* of keeping one unit relatively white by confining blacks to another. . . .
>
> . . . .
>
> . . . The facts of this case do not establish . . . that state establishment and maintenance of school districts coterminous with the political subdivisions of the City of Richmond and the Counties of Chesterfield and Henrico have been *intended to circumvent* any federally protected right.

(Pet. A. 571-72, 580) (emphasis added). Having found no such invidious purpose or motivation, the court of appeals concluded there was no constitutional violation, and that the district court was thus without authority to act (Pet. A. 581).

This Court in *Emporia*, 92 S.Ct. 2196, however, made it clear that "effect" was controlling and that any inquiry into purpose or motivation was as irrelevant as it was fruitless in that the existence of permissible purposes cannot otherwise sustain actions that have an impermissible effect. *Emporia*, 92 S.Ct. at 2203. It is thus apparent that the decision of the court of appeals was predicated on a judicial standard which has been expressly rejected by this Court.

Moreover, the judgment of the court of appeals is irrecon-

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cilable with much of the rationale underlying the opinion of the dissenting Justices in *Emporia*, 92 S.Ct. at 2207-14. First, as evidenced by this Court's unanimous opinion in the companion case, *Scotland Neck*, 92 S.Ct. 2214, no Justice has questioned either the power of a district court in a proper case to enjoin state or local officials acting under state law from carving out a new school district from an existing district that had not yet completed the process of dismantling a system of enforced racial segregation, or the principle that the remedial powers of a district court are not limited by provisions of state law. The dissent in *Emporia* was not predicated, as was the opinion of the court of appeals in this case, on any tenth amendment limitation on the remedial powers of federal district courts, but rather on the belief that the lower court had abused its discretion in light of the particular facts and circumstances presented. Secondly, it would appear that on the particular facts presented in this record, the rationale employed in the *Emporia* dissent is indeed consistent with an affirmance of the relief decreed by the district judge below.

In his dissent, Mr. Chief Justice Burger emphasized that realities, not theories, were to be controlling, that a meaningful remedy was the basic criterion, that "dual systems must cease to exist in an objective sense as well as under the law" *Emporia*, 92 S.Ct. at 2208, and finally that

> [if] it appeared that the city of Emporia's operation of a separate school system would either perpetuate racial segregation in the schools of the Greensville County area or otherwise frustrate the dismantling of the dual system in that area, [he] would unhesitatingly join in reversing the judgment of the Court of Appeals and reinstating the judgment of the District Court.

Emporia, 92 S.Ct. at 2207 (dissenting opinion). It is clear that the dissenting Justices' disagreement with the majority

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in *Emporia* was based on the particular facts before the Court. One circumstance which disturbed the dissenting Justices was that the two separate systems each would have had majority black student racial compositions with a variance of only six per cent, which prompted the disbelief that "a difference of one or two children per class would even be noticed," or that "it would render a school part of a dual system." *Emporia*, 92 S.Ct. at 2209 (footnote omitted).

The realities disclosed by this record, however, are all too clear—gross racial disparities between adjoining school districts, one of which is overwhelmingly black and the other two of which are overwhelmingly white. The differences in the individual classrooms of the various schools in these contiguous districts are pronounced to the extent that the racial identifiability of schools in this area persists.

The dissenting Justices in *Emporia* also concluded that evidence of resegregation between the two systems was highly speculative and remote since the entire area was majority black, but nevertheless were careful to note that "[o]f course, when there are adjoining school districts differing in their racial compositions, it is always conceivable that the differences will be accentuated by the so-called 'white flight' phenomenon." *Emporia*, 92 S.Ct. at 2209. Applying this rationale to the Richmond area, the findings of the district court and the proven existence of the loss of 35 per cent of the white population of the Richmond school system in a 12-month period involving two school openings removes the probability of resegregation from the realm of speculation.

The dissenting Justices further felt that "it surpasse[d] the bounds of reason to equate the psychological impact of creating adjoining unitary school systems, both having Negro majorities, with the feelings of inferiority referred to in *Brown I*. . . ." *Emporia*, 92 S.Ct. at 2210.

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It is respectfully submitted that the findings of the district court as to the adverse effects on the children attending Richmond, Henrico and Chesterfield schools were not only amply supported by educational and sociological authorities who testified during the trial proceedings but, indeed, were well within the realm of common experience. The defendants in this suit have the power under provisions of State law to eliminate "black" and "white" schools, but have not done so; moreover, on this record, it is clear that they will never voluntarily do so.[83] The racial motivation underlying this refusal, as found by the district court, is all too obvious—the continued restriction of blacks to a center core, albeit a larger one, in an otherwise predominantly white area which has likewise expanded. The deleterious effects on perceptions and motivations of the school children are not, we respectfully submit, difficult to perceive even in the absence of the substantial testimony supporting such findings.

Finally, in the view of the dissenting Justices in *Emporia*, allowance of the continued operation of adjoining majority black systems there "would not [have] factually preserve[d] the separation of the races that existed in the past . . . ." and that "all vestiges of the discriminatory system would [have been] removed." *Emporia*, 92 S.Ct. at 2210. Measured by this standard, the failure to affirm the remedy decreed by the district court herein not only would effectively preserve past patterns of separate schools for the races, but would, in fact, engraft an indelible permanence upon the vestiges of the dual system of schools in the Richmond area through the

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[83] The district court made the following pertinent observation:

> [T]he court is satisfied from the evidence that given the attitude of the defendants the securing of the constitutional rights to which the plaintiff class are entitled will not be accomplished except under the supervision of the Court.

(Pet. A. 359).

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continued maintenance of the same historic pattern: black city schools encompassed by traditionally white suburban schools.

B.

EVEN UNDER THE OVERLY RESTRICTIVE TEST OF THE COURT OF APPEALS, THE RECORD HEREIN ESTABLISHES THAT THE CONTINUED MAINTENANCE OF THE EXISTING SCHOOL DIVISION LINES HAS, IN PART, BEEN RACIALLY MOTIVATED

It is clear that while the decision of the court of appeals severely limits the power of a district court to consider assignments of pupils across existing school division lines, it does admit of such a remedy upon a showing of racial motivation or purpose underlying the continued maintenance of these lines. This record, in fact, does establish that the persistent maintenance of the area's school division lines has been in part racially motivated. As the district court expressly found:

> [a] firm policy of resistance at the state and local levels to consolidation or other methods of cooperative pupil assignment [*i.e.*, contractual interchange of pupils] on any significant scale so as to bring about desegregation *has been related at each level to racial motives.* . . . There has been a discernible policy of refraining from taking such steps as would promote desegregation. . . .

(Pet. A. 212). After pointing out that all officials had been well advised of the facts creating the community school problem through the division of the Richmond area into racially identifiable sectors, and that the only realistic remedy at this time involved the crossing of area school lines, the district court further found as follows:

> Rejection of such a solution by the county and state defendants is explicable principally in terms of racial hostility. Opposition to desegregation in the counties

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has been the historical pattern to the present date. State officials have been guilty of encouraging or condoning such sentiment. County officials have publicly disclaimed any obligation to play an effective role in the desegregation of schools in the area and declared their opposition to effective desegregation and disapproval of Supreme Court rulings setting forth the law of the land on the subject. Considering the historic flexibility of political subdivisions in the state and in this area in matters of pupil exchange across political boundaries and in the cooperative operation of other public utilities, in view of the several statutory patterns—part of the public policy of the state—under which cooperative ventures can be undertaken, and in view of the fact that school operation in the counties has always entailed transportation times and distances similar to those involved in the suggested metropolitan plan, resistance to the proposal appears clearly to be racially based.

. . . .

. . . The evidence here indicates that a primary consideration in the refusal of county officials to establish cooperative school operation with Richmond has been their own concurrence with perceived constituents' opposition to integration efforts, which one county official termed "unamerican." This is not a legally cognizable objection.

Such an attitude is wholly at odds with considerations of one's affirmative obligation to exercise state-conferred powers affecting school administration so as to promote that end. The state and county officials equipped to alter the limits of attendance units unquestionably have that duty, their conduct affecting deeply the educational interests of many thousands of our youth and constitutional rights of the plaintiffs. Yet they have refused to act. . . .

. . . .

From the insubstantiality of nonracial reasons for adhering to political subdivision boundaries as attendance limits, the Court infers that insistence on such a

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policy must be predicated on its known racial effects. A purposeful, centrally compelled policy of segregation persisted in Virginia for many years; its effects endure today and affect the racial characteristics of the schools. Its abandonment has been gradual, piecemeal, and intentionally reluctant and is less than total today. No administrator can plead ignorance of these facts. At the same time, by means of repeated internal and outside surveys, reports, and recommendations, the magnitude of the problems of the depth of discrimination and its impact and the means to begin to alleviate it were presented to official bodies with the power to act. When their response was inaction or even contrary steps, it cannot be said that they acted without the intention of infringing constitutional rights. Informed of the consequences of past discrimination, they knowingly renewed or entrenched it. "[I]t was action taken with knowledge of the consequences, and the consequences were not merely possible; they were substantially certain. Under such conditions the action is unquestionably wilful." . . .

(Pet. A. 230-32, 258-59) (citations omitted).

Discussing the interrelationship of the existing lines with strict patterns of housing segregation, the district court concluded that "by the maintenance of existing school division lines the State advantages itself of private enforcement of discrimination and prolongs the effects of discriminatory acts of its own agents." (Pet. A. 195-96) (citation omitted).

Additional circumstances underlie and support the foregoing findings: the amendment of Section 22-30 of the Code of Virginia, effective July 1, 1971, created an additional obstacle for the combining of two or more political subdivisions into one school division through a first-time requirement of consent on the part of the governing bodies and school boards of the affected localities; at the time this suit was pending, the area school division lines were actually

redrawn and re-established by the State Board of Education without any consideration being given to the effects thereof on the process of desegregation or on the dismantling of the state-mandated system of dual schools; and there was open hostility on the part of County leaders to any integration—particularly with the children of the City of Richmond—which persisted up to and throughout the trial below.[84]

Hence, it is apparent that the record herein even satisfies the test of the court of appeals as to the necessity for establishing racial motivation in the continued maintenance of the existing school division lines. Even under such an erroneously restrictive test, the district court's findings required it to approve a plan involving pupil assignments across the school division lines in the Richmond metropolitan area.

C.

THE JUDGMENT OF THE COURT OF APPEALS EFFECTIVELY THWARTS THE GUIDELINES FOR THE FASHIONING OF EFFECTIVE RELIEF AS ESTABLISHED IN PRIOR DECISIONS OF THIS COURT

As this Court noted in *Emporia,* 92 S.Ct. at 2202, the court of appeals apparently did not consider that case to have been governed by the principles of *Green* and *Monroe v. Board of Commissioners,* 391 U.S. 450 (1968). The same general critique is fully applicable to its decision here in that the appellate court failed to reconcile its conclusions with no less than four key objectives previously established by this Court. Instead, the application of its rationale places rigid limitations on these guidelines with dire consequences to the future of school desegregation in de jure metropolitan areas.

"Effectiveness" has been firmly established as the measure of any desegregation plan.[85] Yet under the decision of the

[84] See note 42 *supra.*

[85] *E.g.,* Davis, 402 U.S. at 37; Emporia, 92 S.Ct. at 2203.

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court of appeals, irrespective of its relative effectiveness, the metropolitan desegregation plan involving assignments across existing school division lines was adjudged to have been beyond the scope of the lower court's remedial power absent proof of invidious racial purpose or motivation in the establishment or maintenance of those lines. The district court's conclusions as to the relative effectiveness of the metropolitan plan were not disputed by the court of appeals which, instead, noted that in his concern for effective relief the district judge had overlooked limitations upon his remedial powers (Pet. A. 563). If after years of extensive litigation the relief which has been afforded consists of little more than the maintenance of historically black schools, and indeed, the establishment of a substantially all-black system in the face of a viable and feasible alternative which promises realistically to work in providing equal educational opportunity, the promises of *Brown I* will in reality have little meaning to school children in the Richmond community.

This Court has also made it clear that the objective in the development of any desegregation plan should be the attainment of the greatest possible degree of actual desegregation and the elimination to the extent feasible of all vestiges of the dual system of schools.[86] Again, the overwhelming evidence before the district court was that attempts to desegregate within Richmond alone were futile exercises doomed to failure which paled in comparison to the realistic expectations provided by the City Board's metropolitan plan (Pet. A. 207-08, 230, 237, 239-40). The consequence of the judicial standard adopted by the court of appeals, however, presents a stark contrast between what will and what could occur: the promise of substantially all-black schools within the City surrounded by substantially all-white schools in the

[86] Davis, 402 U.S. at 37; Swann, 402 U.S. at 15; *cf.* Green, 391 U.S. at 437-38.

Counties with the attendant community and student perceptions of "black" and "white", "inferior" and "superior", schools, as opposed to the district court's remedy which promises realistically to erase the racial identifiability of schools in the area and to remove all vestiges of the dual school system which do in fact persist in the Richmond metropolitan area today.

This Court has also made it clear that in desegregating schools, district courts and school authorities as well have a duty to consider all available options and alternatives in selecting the plan which holds the greatest expectation of working in practice.[87] This mandate was limited by the court of appeals, however, to the extent that the district judge could not consider alternatives which involved either the interdivisional exchange of pupils or the consolidation of school districts even though he had found compelling factors and circumstances requiring such relief.

Regarding such available alternatives, it is important to note that Virginia law has never forbidden the contractual exchange of pupils between separate school divisions, that for many years there has been a legislatively conceived plan for the consolidation of school divisions consisting of more than one political subdivision, and that current laws make no requirement that school divisions conform to political subdivision boundaries[88] (Pet. A. 227-29, 607-13, 618-21). Even though the present law (Section 22-30 of the Code of Virginia) requires the consent of the local governing bodies and school boards prior to a consolidation (Pet. A. 228, 617), it is axiomatic that the enjoyment of fundamental constitutional rights cannot be made to depend upon any

[87] *E.g.*, Green, 391 U.S. at 439.

[88] See note 51 *supra;* notes 62 & 63 *supra* and accompanying text.

popular consent[89] and that state laws which serve as
nents or barriers to the effective disestablishment of
hool systems are not binding on a district court in its
tion of effective relief.[90] Moreover, the district court
required and ordered the State and County defend-
exercise powers which had been expressly granted
by State law (Pet. A. 538-40).

arly, the court of appeals made no reference to the
nts of this Court to the effect that the most potent
s for the dismantling of dual school systems lie in the
of school districts and attendance areas.[91]

the analogy which this Court has drawn between the
of relief in school desegregation and antitrust cases,[92]
r that an effective plan should, to the extent feasible,
the recurrence of the evils sought to be corrected.
trict court's concern over the resegregation of the City
was amply supported by the evidence establishing a
ent loss of white students within 12 months under the
chmond-only desegregation plans. Yet the court of
without even alluding to the district judge's con-
as to the lack of any realistic chance for effective
ithin the City system, established a standard which
ed to this case will insure a return to the situation
xisted in 1954 and in 1969-70 as well, *i.e.*, all black
in Richmond and, indeed, 85 per cent of all black
n the Richmond metropolitan area, will be attending

Lucas v. Forty-Fourth Gen. Assembly, 377 U.S. 713, 736-37
Haney v. County Bd. of Educ., 410 F.2d 920, 925 (8th Cir.

and Neck, 92 S.Ct. at 2217, *quoting* North Carolina State Bd.
v. Swann, 402 U.S. 43, 45 (1971); *see also* cases cited note

n II, 349 U.S. at 300-01; Swann, 402 U.S. at 27.

ote 55 *supra*.

virtually all-black schools surrounded by substantially all-white schools.

D.

THE DECISION OF THE COURT OF APPEALS WAS BASED ON "NEW" FINDINGS ACHIEVED THROUGH A SIGNIFICANT DEPARTURE FROM THE STANDARD OF APPELLATE REVIEW IN SCHOOL DESEGREGATION CASES

This Court has made it clear that the weighing of facts and circumstances to determine their effect upon the process of desegregation is a delicate task that is aided by the sensitivity of the trier of facts to local conditions, and that the judgment with respect thereto is primarily the responsibility of the district court.[93] Furthermore, as this Court has specifically ruled in another school desegregation case, a court of appeals commits error when it substitutes its own findings for those of the district court which are supported by substantial evidence.[94] From a comparison of the court of appeals' opinion with the record in this case, however, it is clear that in critical areas the appellate court substituted its evaluation of the evidence for that of the district judge.

In concluding that the desegregation of schools by the three school divisions involved was pathetically incomplete (Pet. A. 237), the district court had considered voluminous evidence relating to the actual operation of the Richmond, Henrico and Chesterfield schools for many years including the term which had concluded in June of 1971, approximately two months prior to the hearings below.

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[93] *E.g., Emporia*, 92 S.Ct. at 2205, *citing* Brown II, 349 U.S. at 299; *see also* Swann, 402 U.S. at 28.

[94] Northcross v. Board of Educ., 397 U.S. 232, 235 (1970). The United States Court of Appeals for the Seventh Circuit, in a school desegregation case as well, has recently recognized this established constraint on its powers of review. United States v. Board of School Comm'rs., No. 72-1031 (7th Cir., decided Feb. 1, 1973) (slip opinion at 6).

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In phrasing the issue in its terms, however, the court of appeals in the initial paragraph of its opinion implicitly assumed the operation of unitary systems by all three school divisions involved[95] (Pet. A. 562). No party, however, including the Richmond School Board, contended that the City had achieved a unitary system during the 1970-71 school year. The basis for such an assumption by the appellate court is thus unclear. Moreover, as is implied in subsequent portions of its opinion, the court of appeals agreed that neither Henrico nor Chesterfield had attained a unitary system during the 1970-71 year, the last school year for which data was available. The appellate court stated that with the discontinuation by Chesterfield of its connection with Matoaca Laboratory School (which occurred subsequent to the 1970-71 school year)[96] and Henrico County's announced plan to reassign the 40 per cent of its total black elementary enrollment which had attended Central Gardens School during the 1970-71 school year, the systems had become unitary[97]

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[95] In Judge Winter's view, he probably would not have dissented "were the case as simple as described in the opening paragraph of the majority opinion. . . ." (Pet. A. 585 n. 1)

[96] Prior to the 1971-72 school year, the Matoaca Laboratory Elementary School, on the grounds of Virginia State College, was listed as a Chesterfield County school and was administered by the Chesterfield School Board with regard to the disbursement of State funds, pupil transportation, teaching materials, food service and the like (Pet. A. 385). In submitting compliance data to HEW in 1971, the County reported Matoaca Lab as an all-black school with an all-black faculty. When challenged by HEW, Chesterfield responded by dropping Matoaca Lab from its system as of 1971-72 (Pet. A. 386). The facility is still operated as a virtually all-black elementary school. Thus, at the time the district court rendered its opinion and order, the precise responsibility for the operation of Matoaca Lab was unclear, and the court of appeals apparently chose to ignore the clear implication of the State of Virginia in the continued operation of this all-black public school.

[97] These measures, of course, occurred *after the commencement of the trial proceedings below*. Regarding actions taken by school au-

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(Pet. A. 571-72). Remarkably, the court of appeals made this assumption without reference to any of the other non-unitary features which had been considered by the district judge such as the racial identifiability of faculties and the gross examples of racial isolation in other schools (Pet. A. 384, 397, 524-29), and, indeed, without the benefit of relevant data subsequent to the 1970-71 school year.

It is apparent from the opinion of the court of appeals that it was troubled by the size of the proposed consolidated school division and by problems of finance and budgeting which in its opinion were sufficient to "boggle the mind" (Pet. A. 578). Suffice it to point out that after weighing the extensive evidence presented on all such aspects of the proposed metropolitan desegregation plan, the district court concluded that the optimal size of any school district was largely dependent on the objectives sought to be attained (having before it evidence of the eminently successful operation of the Fairfax, Virginia school system consisting of more than 135,000 students), and that in all respects the weight of the testimony from the educational experts established that the proposed plan was reasonable, feasible and workable[98] (Pet. A. 432). In addition, the district court had considerable evidence before it that many of the very features that the court of appeals found disturbing had proved work-

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thorities to correct illegal segregation *after the date on which a particular suit had been filed*, the United States Court of Appeals for the Seventh Circuit has acknowledged that "such actions go more to the propriety of granting equitable relief, rather than to the merits of the district court's findings." United States v. Board of School Comm'rs., No. 72-1031 (7th Cir., decided Feb. 1, 1973) (slip opinion at 13).

[98] Regarding all the testimony as to "optimum" school district size, the district court specifically found that '[c]urrent studies . . . focus principally on the *minimum* size required for a particular purpose" (Pet. A. 432) (emphasis added).

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able in the operation of State-authorized joint schools as well as all-black regional schools (Pet. A. 352-56); indeed, the existence of detailed Virginia laws governing the operation of school divisions consisting of more than one political subdivision (Pet. A. 608-13, 618-21) clearly indicates that such problems were not considered insurmountable by this State's own lawmakers. Certainly no school desegregation case to date upholds the substitution by an appellate court of *new* conclusions regarding elements of the feasibility of desegregation plans when substantial evidence supports findings made by a district court.[99]

In other instances, the court of appeals seized upon one item of evidence relating to a certain point and drew conclusions different from those of the district court without reference to any of the other evidence on the same issue. As a significant example, the appellate court focused upon the testimony of one County official relating to his interpretations of the findings of a questionnaire submitted to students to determine the number who had previously attended City schools. The testimony, designed to establish that relatively few County students ever had attended Richmond schools, convinced the court of appeals that the evidence failed to establish that the City's white students were fleeing to County schools (Pet. A. 573). On this issue, the district court had weighed a considerable amount of evidence establishing the losses of whites from the City system including the testimony in question and, with respect to the results of the specified questionnaire, the record indicated that the County Superintendent was unable to give any detailed information as to the scope, extensiveness or degree of participation by County students (A. 1026-27). In addition, this Superintendent had previously admitted that his staff had been con-

[99] *Cf.* cases cited note 94 *supra.*

fronted with the problem of white parents and students from Richmond giving false County addresses and renting unoccupied apartments for the purpose of gaining admission to the substantially all-white schools in the County (A. 491; Pet. A. 383). Certainly, it is doubtful that students engaging in such activities would candidly answer any questionnaire exposing their actions. Further, the questionnaire obviously failed to reflect the degree of white attrition occasioned by parents moving to the Counties so that their children could be initially enrolled in County schools. This further explanation of the record upon which the district court relied is illustrative of the danger inherent in any departure from the accepted standard of judicial review of factual determinations.

On the question of the effects of admitted racial discrimination by all three political subdivisions in housing and the admitted refusal of the Counties to take steps necessary to allow the construction of low-cost or rent-subsidized housing, the court of appeals concluded that it was "unable to determine whether such discrimination, practiced in all three units, has had any impact upon movement by blacks out of the city and into the counties" (Pet. A. 574). The district court's conclusions in this area, however, were predicated on substantial evidence and testimony providing a reasonable basis for its determinations that discrimination in housing, school site selection and construction, public employment, and County operation of small, inferior all-black schools through the late 1960's and County inaction in failing to provide low-cost housing had operated to contain blacks within Richmond, in turn, accentuating the extreme racial disparity between the City and the two Counties (Pet. A. 195-211, 380-82, 392).

These illustrative intrusions upon the normal standard of appellate review which under Rule 52(a), Fed. R. Civ. P.,

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is limited to the extent that the findings of a district court may be set aside only if found to be clearly erroneous, require this Court to find that the court of appeals erred.

E.

THE RATIONALE OF THE COURT OF APPEALS VARIES WITH THAT UTILIZED BY OTHER FEDERAL COURTS IN RELATED CASES

Though factually distinguishable, the issues presented herein are closely akin to those dealt with in *Emporia* and *Scotland Neck* as well as other cases involving the attempted creation of splinter school districts. In pointing out that it was unfortunately predictable that a court which had approved the dismantling of existing school districts so as to create smaller whiter enclaves had now rejected the consolidation of school districts to make effective the mandate of *Brown I* and its progeny (Pet. A. 585-86), Judge Winter made the following comparison:

> . . . While the district court attempted to distinguish these cases, the fact is that they are simply the obverse of the same coin which is presented here. In each of *Scotland Neck* and *Emporia*, the effect of splitting the school district was further to delay and hinder the achievement of what would otherwise have been a unitary system in the original district, although arguably there were noninvidious reasons for subdividing. Here, as I view the case, the question is one of consolidating school districts *within the framework of state law* in order to eradicate the effects of past discrimination and to achieve a unitary system. Logically it is impossible to sustain the former and not condemn the converse. . . .

(Pet. A. 585 n. 1)

As noted by this Court in *Emporia*, the reasoning of the court of appeals differed materially from that utilized by

other federal courts which had prohibited the carving out of "white enclaves" based not on the motive or purpose underlying the actions taken by the respective school authorities, but on the *effect* of such practices.[100] If the court of appeals' decision is left undisturbed, the result would be productive of the following incongruity: in the splinter district cases the actions of state and local school authorities would be judged in terms of their effect on the dismantling process, whereas such a test would be irrelevant in prescribing the circumstances under which a district court may require either the assignment of students across existing school division lines or the merger of existing districts in accordance with provisions of state law in order to alleviate the effects of past discrimination. The criteria should be the same, however, since in both instances school boundaries affect the dismantling process by serving as barriers to effective desegregation.

The severe limitation on the remedial powers of the district court occasioned by the court of appeals' reliance on both Virginia tradition and the tenth amendment to sanctify existing school division lines (Pet. A. 575-80) is in sharp contrast with the view of the United States Court of Appeals for the Eighth Circuit as expressed in *Haney v. County Board of Education*, 410 F.2d 920 (8th Cir. 1969) [hereinafter cited as *Haney*]:

> If segregation in public schools could be justified simply because of pre-*Brown* geographic structuring of

[100] Emporia, 92 S.Ct. at 2203, *citing* Lee v. Macon County Bd. of Educ., 448 F.2d 746, 752 (5th Cir. 1971); Stout v. Jefferson County Bd. of Educ., 448 F.2d 403, 404 (5th Cir. 1971); Haney v. County Bd. of Educ., 410 F.2d 920, 929 (8th Cir. 1969); Burleson v. County Bd. of Election Comm'rs., 308 F.Supp. 352, 356 (E.D. Ark.), *aff'd*, 432 F.2d 1356 (8th Cir. 1970); Aytch v. Mitchell, 320 F.Supp. 1372, 1377 (E.D. Ark. 1971).

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> school districts, the equal protection clause would have little meaning. . . .
>
> State legislative district lines, congressional district and other state political subdivisions have long ago lost their mastery over the more desired effect of protecting the equal rights of all citizens. . . . [*citing* Gomillion v. Lightfoot, 364 U.S. 339 (1960)].
>
> Political subdivisions of the state are mere lines of convenience for exercising divided governmental responsibilities. They cannot serve to deny federal rights. . . .[101]

The court of appeals made no reference to the district court's finding that the existing school division lines were redrawn as late as July 1, 1971, pursuant to the requirements of the revised State constitution which took effect on the same date (Pet. A. 229). This express reaffirmance of the present school division lines had the uncontradicted effect of a state-approved separation of an existing 70 per cent black school division (Richmond) from the two 90 per cent white school divisions surrounding it. Furthermore, this redrawing occurred at a time when the State was under a clear and continuing duty to take whatever steps might be necessary to eradicate all vestiges of its dual system of schools.[102] The failure of the court of appeals to even consider this a proper point of inquiry cannot be squared with the rationale of the court in *Haney* that "[i]t would be sheer fantasy to say that the school districts in Sevier County could be realigned today in the same manner that they were

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[101] Haney, 410 F.2d at 924-25, *citing* Reynolds v. Sims, 377 U.S. 533 (1964); Hall v. St. Helena Parish School Bd., 197 F.Supp. 649, 658 (E.D. La.), *aff'd*, 287 F.2d 376 (5th Cir. 1961), *aff'd per curiam*, 368 U.S. 515 (1962).

[102] See note 76 *supra*.

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in 1948 and still comply with the constitutional mandate of *Brown I* and *II*." *Haney*, 410 F.2d at 924.

With regard to the force and effect of Virginia's consent requirement regarding the consolidation of separate school districts, the court of appeals mistakenly felt that it would have been necessary to have held such a limitation unconstitutional had the plan approved by the lower court been affirmed (Pet. A. 575, 577-78). Such reasoning, however, ignores the basic tenet that the enjoyment of constitutional rights cannot be made dependent upon popular consent. As was expressed by the court in *Haney*,

> . . . [t]he argument that 'equal protection' rights must depend upon the majority vote has never found foothold under our form of constitutional government. Democratic government under our Constitution respects the majority will, but our forefathers had sufficient vision to insure that even the many must give way to certain fundamental rights of the few.

Haney, 410 F.2d at 925 (citations omitted).

Also ignored by the court of appeals was the settled principle that the remedial powers of a district court cannot be limited by provisions of state law.[103]

Finally, even though its opinion was subsequently vacated pursuant to the granting of an en banc rehearing, it is significant that a three judge panel of the United States Court of Appeals for the Sixth Circuit in a desegregation case involving the Detroit, Michigan school system has noted its rejection of "the contention that school district lines [were] sacrosanct and that the jurisdiction of the District Court to

[103] Haney, 410 F.2d 920; United States v. Greenwood Mun. Sep. School Dist., 406 F.2d 1086, 1094 (5th Cir.), *cert. denied*, 395 U.S. 907 (1969).

grant equitable relief . . . [was] limited to the geographical boundaries of Detroit."[104] Concluding that "the District Court . . . [was] not confined to the boundary lines of Detroit in fashioning equitable relief", that panel specifically declined to follow the decision of the court of appeals in this case.[105]

Even though the foregoing opinion is not in effect at this time, the applicability of the views of such experienced circuit judges to this case cannot be denied. Of even greater significance, the similar conclusions of the district court herein were based on a record which is much stronger than that which is currently before the Sixth Circuit. In addition to the same type of factual considerations giving rise to the metropolitan relief in Detroit,[106] the record here docu-

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[104] Bradley v. Milliken, Nos. 72-1809, -1814 (6th Cir., filed Dec. 8, 1972), *vacated for rehearing en banc* (Jan. 16, 1973) (slip opinion at 66). This panel had before it *inter alia* four interlocutory orders entered by the district court which had found generally that relief from school segregation could not have been effectively provided by any of the intra-city plans, and that the only realistic plan for desegregation of the Detroit system would have required the assignment of students between a number of city-suburban school districts in the Detroit metropolitan area. See Bradley v. Milliken, 338 F.Supp. 582 (E.D. Mich. S.D. 1971) (ruling as to illegal segregation existing within Detroit system); Bradley v. Milliken, No. 35257 (E.D. Mich. S.D., Mar. 24, 28, June 14, 1972) (ruling on propriety of metropolitan remedy, findings and conclusions on "Detroit only" relief, and ruling on desegregation area and development of plan, respectively).

On February 8, 1973, appellate arguments concerning the relief decreed for the Detroit metropolitan area were made before the full court of appeals which currently has the matter under advisement.

[105] Bradley v. Milliken, Nos. 72-1809, -1814 (6th Cir., filed Dec. 8, 1972), *vacated for rehearing en banc* (Jan. 16, 1973) (slip opinion at 67).

[106] Similar issues are likewise involved in cases which are in various stages of litigation in federal district courts. In a suit brought to desegregate the schools of Indianapolis, Indiana, the district judge there found that the city schools were illegally segregated, and that since

ments the following: the very evil proscribed by *Brown I*—a state with a long history of enforced separation of the races in public education; tortious years of overt defiance and delay in the face of an announced constitutional mandate; pervasive discrimination on the part of all of the school divisions involved; and an abundance of state laws and conduct encouraging both the combining of separate political subdivisions into single school divisions and the interdivisional assignment of pupils for valid educational purposes as well as for the perpetuation of segregation. Finally, the lower court here had the actual experience of witnessing the utter futility of attempts to provide effective relief within the City of Richmond alone.

In summary, the use by the court of appeals of an invidious motivation standard which resulted in the sanctification of existing school boundaries is clearly contrary to the effect-oriented test which this Court adopted in *Emporia* and

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any plan of desegregation confined to the city system alone might not work in affording a realistic remedy, suburban school districts in the Indianapolis metropolitan area should be joined as parties so that the matter could be fully litigated. United States v. Board of School Comm'rs. of City of Indianapolis, 332 F.Supp. 655 (S.D. Ind. 1971), *aff'd*, No. 72-1031 (7th Cir., decided Feb. 1, 1973). This Court has refused to hear questions presented by one of the newly joined suburban school districts regarding the propriety of the joinder action. School Town of Speedway v. Dillin, *cert. denied*, ... U.S. ....., 92 S.Ct. 2457 (1972). Related questions have arisen in a case involving the Atlanta, Georgia school system. In *Calhoun v. Cook*, 332 F.Supp. 804 (N.D. Ga. 1971), the district court noted that at the time the case was originally filed in 1958, the Atlanta system was approximately 70 per cent white whereas at the time of its decision, there had been a complete reversal in percentages in that the system was then 70 per cent black. Calhoun, 332 F.Supp. at 805. The United States Court of Appeals for the Fifth Circuit has specifically directed that the district court make supplemental findings of fact and conclusions of law with regard to suggestions made by the latter concerning the desirability of a metropolitan area solution to the increasing segregation within the Atlanta system. Calhoun v. Cook, 451 F.2d 583 (5th Cir. 1971).

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which had been applied previously by other federal courts. The dire consequences which would flow from an affirmance of the unique approach of the court of appeals are all too clear. The tenth amendment, concerned with neither individual justice nor equality, would preclude an effective, feasible remedy for a long-standing denial of equal educational opportunity. The children in the Richmond metropolitan area for the foreseeable future would thus attend clearly identifiable black or white schools just as previous generations had done both prior to and after 1954.[107]

CONCLUSION

In the view of the district court, the nature of the relief required under this Court's previous decisions from *Brown I* through *Swann* and *Davis* necessitated the assignment of pupils across the existing school division lines in the Richmond metropolitan area. Based on a legislatively conceived alternative for the operation of schools, the lower court's order was fully supported by exhaustive findings which the court of appeals failed to find as clearly erroneous, instead basing its reversal on legal principles which run counter to guidelines established by this Court as well as others. The effect of the decision of the court of appeals is to perpetuate

[107] Chief Judge Phillips in his vacated opinion regarding the necessity for a plan of desegregation extending beyond the boundaries of the Detroit School District, recalled the admonition from Chief Justice Marshall:

> The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

Bradley v. Milliken, Nos. 72-1809, -1814 (6th Cir., filed Dec. 8, 1972), *vacated for rehearing en banc* (Jan. 16, 1973) (slip opinion at 66), *citing* Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803).

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indefinitely the vestiges of the dual system of schools which remain in the Richmond metropolitan area thus rendering illusory the promises inherent in *Brown I*.

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be reversed and the district court's January 10, 1972 order reinstated with directions that it be implemented forthwith.

Respectfully submitted,

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IN THE

Supreme Court of the United States

Nos. 72-549, 72-550

SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,

CAROLYN BRADLEY, ET AL.,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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IN THE

Supreme Court of the United States

Nos. 72-549, 72-550

SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,

CAROLYN BRADLEY, ET AL.,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF AMICUS CURIAE FOR THE NATIONAL EDUCATION ASSOCIATION

INTEREST OF THE NATIONAL EDUCATION ASSOCIATION

The National Education Association (hereinafter NEA)[1] is an independent, voluntary organization of edu-

[1] Counsel for the parties have consented to the filing of this brief. Letters of consent have been filed with the Clerk of the Court pursuant to Rule 42(2) of the Rules of this Court.

cators, open to all professional teachers and administrators. It presently has over one million one hundred thousand regular members, and is the largest professional organization in the nation. First organized in 1857, NEA was chartered by a special act of Congress in 1906. Its statutory purpose is "to elevate the character and advance the interests of the profession of teaching and to promote the cause of education in the United States" (34 Stat. 805).

Both the NEA and its members have a deep interest in achieving and assuring quality education and equality of educational opportunity for the children of all races. In pursuit of this goal, the NEA has participated as amicus curiae before this Court in numerous cases involving the provision of equal educational opportunity. *E.g.*, *Keyes* v. *School District No. 1, Denver, Colorado*, No. 71-507; *San Antonio School District* v. *Rodriguez*, No. 71-1332; *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969). In the instant case, the NEA, with the consent of all parties, filed a brief amicus curiae in the court below.

The case at bar involves important questions regarding the fulfillment of the mandate of *Brown* v. *Board of Education*, 347 U.S. 483, (1954), for the provision of equal education for black children in an urban metropolitan community within a State that maintained a dual school system. It requires this Court to consider whether the district court acted properly and within its equitable powers in ordering consolidation of school districts as a remedy for the continued racial identity of the Richmond schools. As the principal association of educators in this country, the NEA can draw upon a breadth of experience to evaluate for this Court the educational effects of consolidating school districts and the reasonableness of the district court's order.

ARGUMENT

I

INTRODUCTION AND SUMMARY

The State of Virginia and its political subdivisions—the hool districts of Richmond, Chesterfield and Henrico—ve been under a constitutional mandate for 17 years desegregate the schools. Notwithstanding this mandate, chmond's schools today are 70 per cent black and the unties' schools are 90 per cent white. This interdistrict gregation in the Richmond metropolitan area is the oduct of a multiplicity of forces, including discrimina-y policies and practices of private individuals and rporations serving to exclude blacks from the counties d to confine them to the city. A major contributing rce has been a pattern of discriminatory policies and actices by state and local school officials and other blic authorities in Virginia.

The record reflects that state and local officials have ade copious use of their powers to delay and obstruct segregation in the schools within each subdivision. rough delay, massive resistance and other tactics, these icials not only successfully prevented intradistrict de-gregation, but also materially furthered the interdistrict segregation which existed when affirmative measures to segregate within each subdivision finally were taken in sponse to HEW pressure and court order.

In 1954, the City of Richmond was majority white. e counties were blacker in their racial complexion and ore sparsely populated. At that time the possibility stable desegregation within the boundaries of Richmond ll existed: whites constituted a majority (57 per cent) the school population, inadequate housing existed in the unties to absorb any abrupt influx of large numbers of ites, and the interstate highways which today lubricate

the path of the suburban commuter had not been built. Stable desegregation within the confines of Richmond is no longer possible today, when blacks constitute 70 per cent of the school population and when the counties constitute convenient sanctuaries for whites seeking to avoid desegregation. Thus, official delay had the operative effect of facilitating resegregation, on an interdistrict basis, by the time intradistrict desegregation was at hand.

By then, demographic changes had transformed the city-county lines into racial dividers. Black children in Richmond, and their parents, teachers and the community at large, perceived the three economically and socially interrelated jurisdictions in the metropolitan area as a single community and regarded the Richmond schools as segregated institutions. The district court, in findings that were not overturned by the court of appeals, found that, as a result, black children in Richmond suffered harm at least comparable to the harm which this Court in *Brown* recognized as flowing from the segregated schools in the cases then before it.

Moreover, instead of leading the way toward compliance with the *Brown* mandate, and influencing positively the attitudes of whites and blacks towards desegregation, official conduct for 17 years constituted a negative force. It encouraged whites to believe that desegregation was to be avoided at any cost. Whites whose attitudes towards desegregation might have been favorably shaped by official compliance were taught, by official defiance, the imperative of circumvention. Among the lessons which delay and obstruction taught blacks in the city was that hostility—official as well as private—would attend their efforts to become integrated with whites. Thus, official action can fairly be said to have played a role both in stimulating the in-flow of whites to the counties and in discouraging blacks from seeking to live in the developing white suburbs.

School officials influenced the population patterns that led to interdistrict segregation in more direct ways. Initially the counties baited developing residential areas with new schools expressly designed for whites only. After the counties adopted freedom of choice, the counties built and maintained racially identifiable schools with segregated staffs. These school construction policies contributed to the development of the white havens ringing the City of Richmond. These havens, by their nature, discouraged black entry. The limited number of school facilities available for black families in the counties constituted a further deterrent to the in-migration of blacks.

Against this background, the court of appeals erred in overturning the district court's finding that official discrimination contributed substantially to interdistrict segregation in the metropolitan area, and the district court's conclusion that it had the power to remedy that segregation.

With respect to the remedy, the district court had broad equitable discretion to frame a decree which would undo the effects of the discriminatory actions and policies of the State and its subdivisions. Under the facts of this case, the court did not abuse that discretion in ordering merger of the three school systems.

NEA believes that the merger required by the district court's order has many educational advantages. It accords with the recommendations of the President's Commission on School Finance and the 1972 Report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education (the Fleischmann Report). It also accords with the Virginia State Board of Education's policy of encouraging school consolidation and is consistent with the educationally desirable national trend which since 1932 has seen the

number of school districts shrink from more than 125,000 to 17,500.

Specifically, the consolidation of the three school districts would bring to the children in the Richmond metropolitan area the advantages of heterogeneous grouping of students. It would provide a broader financial base and therefore greater fiscal stability for the schools throughout the three districts. And it would afford the affected school districts the wherewithal to provide equipment and highly trained personnel for special programs that can be feasibly offered only where substantial numbers of children are involved.

II

The State and Its Subdivisions Are Responsible in Substantial Measure for the Existing Interdistrict Segregation of the Schools in the Richmond Metropolitan Area

A. The State and Its Subdivisions, by Promoting Racial Separation Through "Massive Resistance" and Delay and by Baiting Their School Districts With White and Black Schools, Contributed Materially to Interdistrict Segregation in the Richmond Metropolitan Area.

1. *Delay for 17 Years Has Foreclosed the Opportunity for Stable Desegregation Inside the City of Richmond.*

In 1954, stable desegregation might have been achieved within the city limits of Richmond. The district court found that while Richmond's school system today is identifiably black, "[t]his was not always the case." "It is so at present because in substantial part the policy of school segregation, continued to the present, contributed to pervasive housing segregation."[2] In 1954 the city's schools were 57 per cent white. Henrico was approximately 20 per cent black and Chesterfiield approximately 10 per cent black. (R.X. 62A). Moreover,

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[2] Memorandum Opinion and Order of the district court dated January 5 and 10, 1972, at page 208a of the "Appendix to Petition for Certiorari, Opinions Below and Relevant State Laws" filed by the School Board of the City of Richmond. The decisions of the courts below hereafter will be cited to this appendix as "Pet. A.," followed by the page reference. The printed appendix in this Court was not available at the time this brief was prepared. Accordingly, the record citations are to the transcript ("Tr."); plaintiff Bradley's exhibits ("P.X."); Richmond exhibits ("R.X."); Chesterfield exhibits ("C.X.") and Henrico exhibits ("H.X.").

the counties were more sparsely populated.[3] At that time housing in the counties was inadequate to readily accommodate any abrupt influx of large numbers of white families.[4]

By 1970, when the school districts had been compelled by court order and HEW pressure to act, major changes had occurred which made stable desegregation within the confines of the city impossible to achieve. In a city in which, as the district court found, black schools were perceived as inferior (Pet. A. 189a, 476a), the black proportion of the city's school population climbed from 43 to 70 per cent. And the city's black ghetto expanded to the point where it could not be desegregated in any significant measure without busing. The number of black public school students in the city rose from 15,598 to 30,097 between 1954 and 1970 (R.X. 75).

In addition, the counties became more accessible. Interstate superhighways were built to smooth and shorten the duration of the suburban commuter's trip to and from his place of work in Richmond.[5] Substantial housing was constructed to accommodate the growing suburban movement.[6] As the county populations grew,[7] the counties

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[3] Between 1950 and 1970, the total population of the two counties increased by 136 per cent. See note 7, *infra*.

[4] See note 6, *infra*.

[5] The Federal Aid Highway Act of 1956, 23 U.S.C. § 102 *et seq.*, with its provision for federal grants amounting to 90 per cent of the construction costs, provided the impetus for the interstate highway system.

[6] Between 1951 and 1971 inclusively, Henrico opened 674 subdivisions comprised of 21,199 lots (H.X. 24). In this period Chesterfield opened 426 subdivisions comprised of 14,199 lots (C.X. 21).

[7] Henrico's population between 1950 and 1970 increased from 57,340 to 154,364 or a growth of 169 per cent. Chesterfield grew from 40,400 to 76,855, a growth of 90 per cent, which does not take into account the loss of 44,000 persons through annexation by Richmond in 1970 (H.X. 21; Tr. A-24; Pet. A. 497a).

became whiter in their racial complexion. The black proportion of the school population diminished to 7.9 per cent in each county. The counties had become convenient white havens. (Pet. A. 418a). By 1970, the Richmond schools had become demographically unstable. In 1970 and 1971, some 39 per cent of the white students in the Richmond schools left the system (Pet. A. 237a).

Against this background, delay had the operative effect of giving whites time to relocate before desegregation was decreed. Thus, delay had an impact similar to the "free transfer" rule and Virginia's tuition grant program: its effect was "to allow *resegregation*." See *Monroe* v. *Board of Commissioners*, 391 U.S. 450, 459 (1968) (Italics by Court). See also Pet. A. 218a, 321a.

In addition, delay aggravated the problem of eliminating the racial identity of Richmond's black schools. In 1954, desegregation of the Richmond schools would have resulted in a less drastic differentiation between the racial complexion of the schools in the city and the county than was possible by 1970. By that year, when desegregation of the Richmond schools was decreed, those schools had become heavily black and the county schools whiter. The city border had become a racial divider. Eight blocks from Richmond's John Marshall High School (78 per cent black), Henrico operated Henrico High School (96.1 per cent white) (Pet. A. 429a). Richmond was operating an 88 per cent black high school (*Id.*) inside Henrico County whose schools on the average were 92.1 per cent white (R.X. 77). One half-mile from the Richmond line beyond which the schools averaged 70 per cent black, Chesterfiield operated the 95 per cent white Manchester High School (Pet. A. 524a).

Delay in the face of these demographic changes thus cut off the opportunity that existed in 1954 for black children in Richmond to enjoy the benefits of a desegre-

gated education in the city system. By 1970, black pupils and their parents, teachers and the community at large perceived their schools—in the context of the economically and socially interrelated metropolitan community[8]—as segregated institutions. On the basis of achievement data and expert testimony the lower court concluded that the assignment of "a great majority of the black children . . . in 70% or more black schools, at a time when 90% white schools are operated just across the line, has the same impact upon self-perception and consequent effect upon academic achievement as that of official segregation as it existed in 1954" (Pet. A. 478a).[9] As the district court suggested, the damage to the black children about which this Court spoke in *Brown* v. *Board of Education* "may now have the additional negative component of perception by blacks that the law has spoken and the situation is the same" (Pet. A. 474a). In sum, as the district court found, "the children of the three areas

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[8] The briefs of the petitioners set forth the evidence underpinning the fact that the counties and the city now form a single metropolitan community. In this connection see also Carolyn Bradley's Petition for Certiorari in this case, pp. 15-21.

[9] As the district court noted, "Schools the racial composition of which departs significantly from the community parity . . . are perceived by parents, teachers, administrators, public officials, pupils, and the community at large as facilities designed and operated for one race or the other" (Pet. A. 188). That court also found that "the social psychology of the Richmond area is such that schools with black enrollments substantially disproportionate from the racial composition of the area will be perceived by the community as bearing a stigma of inferiority. Black pupils of such schools will achieve less by reason of such perceptions by the community at large, their teachers, their parents, and themselves. Perceptions affect expectations and the expectations of such persons have a notable impact upon the achievement of individual students." (Pet. A. 476a). The testimony showed and the court found that "[s]chool segregation . . . has a very negative impact upon self-perceptions, and consequently development, of black children." This type of segregation "affects motivation" and instills a "sense of containment, of being confined by a hostile majority, [and] imposes a sense of limited possibilities and decreases ambition." (Pet. A. 472a-73a).

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involved cannot, under existing conditions and as the school divisions are now operated, receive an equal education" (Pet. A. 478a).

2. *The State's Policies of Massive Resistance and Delay Perpetuated and Reinforced Racism.*

The decision in *Brown* afforded State and local school officials in Virginia a unique opportunity to encourage residential integregation and racial harmony. As a result of *Brown*, the State and each of the three school subdivisions were under the duty to dismantle the dual system and extirpate the racial identification of their schools. In the post-*Brown* period the counties—and to a lesser extent the city—were adding large numbers of new homes and residents.[10] Efforts by school officials to comply with *Brown* by locating schools and designing attendance policies in such a way as to further school desegregation would have had a significant impact upon the racial composition of the newly developing residential communities in the counties and transitional residential areas in the city. As this court observed in *Swann*: "People gravitate toward school facilities, just as schools are located in response to the needs of the people. The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner city neighborhoods." *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 20-21 (1971).

Moreover, these officials had the opportunity to shape affirmatively the attitudes and actions of public officials and private citizens. Merely by providing a desegregated education, as *Brown* required, school officials could have influenced positively the racial attitudes and the subsequent residential choices and options of thousands of school children (now adults and parents) who were

[10] See discussion *supra*, p. 8.

graduated from schools in the Richmond metropolitan area in the 17-year period after *Brown*. As this Court noted in *Swann* v. *Charlotte-Mecklenburg Board of Education, supra*, 402 U.S. at 22-23, "desegregation of schools ultimately will have impact on other forms of discrimination." [11] A report of the U.S. Commission on Civil Rights —based on an extensive study prepared by the National Opinion Research Center at the University of Chicago— concluded that whites who attended desegregated schools expressed greater willingness to reside in an interracial neighborhood and to have their children attend desegregated schools and looked more favorably upon fair employment practice laws than whites who attended racially isolated schools. Similarly, blacks who attended desegregated schools were more likely than blacks who attended racially isolated schools to live in desegregated neighborhoods and to send their children to desegregated schools.[12]

Instead of desegregating, however, state and local officials rejected the responsibilities of leadership that *Brown* thrust upon them. By their long delay, they succeeded in preserving school segregation for 17 years. The effects were the very antithesis of those which might have been achieved through school desegregation. As the district court found:

> "Attitudes of whites and blacks, employment, income levels, housing segregation, and the direction of urban growth are all permanently shaped by school segregation. To the extent that segregation endured past 1954, it fostered these effects by reason of the defendants' defiance of the announced constitutional mandate." (Pet. A. 237a).

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[11] See the testimony of Dr. Robert Lucas relating to the effective consolidation of the all-black high school with schools in another district serving Hamilton County, Ohio, which was 90 per cent white (Tr. R-21, 27, 35).

[12] U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* Vol. 1, pp. 111-113; Vol. 2, pp. 211-241.

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Official defiance of *Brown* went well beyond inaction. The State spearheaded "massive resistance" to desegregation and then substituted other devices—including the Pupil Placement Law, the tuition grant program and "freedom of choice"—which have had the purpose or effect of evading the *Brown* mandate. Local officials too assumed an affirmative role in encouraging and stimulating resistance. As late as 1971, the Chairman of the Chesterfield County Board of Supervisors commended to his citizens "a revolt in the form of a school boycott, separate private school system, or even freedom of choice school assignments and letting federal troops see what they can do about it, rather than integrate the schools in Chesterfield County with the City of Richmond" (Pet. A. 412a).

As this Court declared four years ago, "This deliberate perpetuation of the unconstitutional system can only have compounded" the system's harm. *Green* v. *County School Board*, 391 U.S. 430, 438 (1968). Thus, the trial court found that, against the background of segregation existing in 1954, "the systematic obstruction of the rights enunciated in *Brown*, and the deliberate policy to perpetuate segregation through numerous techniques of circumvention, have in combination made clear to white and black members of the community the favor and satisfaction with which the State power views the continued segregation of schools" (Pet. A. 189a). This official conduct could only have encouraged white antipathy toward integregation with blacks and conveyed to blacks a message that official hostility would attend their efforts to seek integration with whites. By encouraging whites to avoid integration and discouraging blacks from seeking it, official policies stimulated and reinforced segregated residential patterns in the metropolitan area.

3. *Affirmative Acts of State and Local School Officials Have Contributed to the Concentration of Blacks in the Richmond School District.*

The state and local authorities, as we have demonstrated in the preceding sections, made stable and effective desegregation in Richmond impossible by their massive resistance and delay in the face of major demographic changes in the metropolitan community. Here we show that state and local school officials, by affirmative acts in addition to massive resistance, influenced the pattern of residential segregation in the Richmond metropolitan area.

This Court has recognized that "People gravitate toward school facilities. . . ." *Swann, supra*, 402 U.S. at 20. When those facilities are designated for whites, they draw white families into the neighboring community. When facilities are designated for blacks, they draw black families. Between 1954 and 1971, Henrico and Chesterfield Counties carried out a massive program of school construction. Henrico built 31 new schools and expanded 36 others (Tr. N-109; H.X. 29).[13] Chesterfield built 33 new schools in the past 20 years (Tr. N-201).[14] In both counties these schools were built and operated as racially identifiable schools with racially identifiable student bodies and faculties (Pet. A. 200a; see R.X. 92; C.X. 31). From 1954 to at least 1962, all schools constructed in the counties were expressly designed to serve blacks or whites (Pet. A. 287a).[15] The district court found that the school construction and attendance policies had "contributed substantially to the current segregated conditions" with "[t]he longer term impact . . . [being] the

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[13] In 1970-71 Henrico was operating 39 schools (Pet. A, 527-29a).

[14] In 1970-71 Chesterfield was operating 37 schools (Pet. A, 524a-26a).

[15] Twenty-three of the 31 new schools in Henrico were built during this period (H.X. 29).

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exaggeration of the racial disproportion between the city and the two neighboring counties" (Pet. A. 200a).

Apart from the immediate segregatory impact of the county programs of constructing racially identifiable schools, the maintenance and operation of such schools created substantial disincentives for blacks to move into the counties. In maintaining the dual system, the counties signalled to the blacks of Richmond, as well as potential black entrants from other areas, that their children would not obtain an integrated education in county schools because those schools were to remain segregated.

The record reflects the obstacles placed in the way of black children who had the courage to seek entry into a white school in the counties. During the era of the Pupil Placement Law, a black child seeking to attend a white school across the street from his home in Chesterfield County was required to request a hearing from the Pupil Placement Board, which in turn would advertise the proposed hearing in the Richmond Times Dispatch once a week for two consecutive weeks. The child and his parents were then to appear at the appointed time to "present their case" (Tr. 0-12, 13).

During the era of "freedom of choice," the counties kept black teachers out of the white schools, thereby discouraging blacks from entering (Pet. A. 524a-29a). The limited school facilities available to black families with high school children also served as disincentives. Chesterfield operated a single all-black high school through 1969-70, and Henrico operated one such high school through 1968-69. At the same time Henrico operated six identifiably white schools and Chesterfield seven. (Pet. A. 524a-27a). Since both counties cover substantial geographical areas,[16] the difference in available facilities meant that

[16] According to the 1970 Census, Henrico County covered 244 square miles and Chesterfield County, 445 square miles (Pet. A. 402a).

whites could choose from among many locations and still reside in close proximity to a high school. Blacks, on the other hand, had a narrower range of housing opportunities if their children were to be conveniently located with respect to the single high school operated for them.

Furthermore, the counties offered to the whites of Richmond and to in-migrating whites a wider range of all-white (98 to 100 per cent white) neighborhood schools than were available in Richmond. For example, as late as the 1969-70 school year, Richmond had one high school, one middle school and six elementary schools which were all-white (Pet. A. 530a-32a). Henrico and Chesterfield, on the other hand, offered a combined total of two all-white high schools, two all-white middle schools and twenty-two all-white elementary schools (Pet. A. 524a-532a). In effect, the counties held open to whites the opportunity to live in a variety of locations within the county boundaries with the knowledge that their children would attend a conveniently located all-white school.

The district court summed up the radiating effects of the discriminatory actions and policies of state and local school officials when considered in combination with the restricted housing options available to blacks (Pet. A. 206a):

> "The interdependency of housing and school segregation is fully established by the record. Schools were planned with an eye to separate racial occupancy and opened as such, with zone and division lines imposed upon segregated housing patterns. The accommodation of expanding pupil population in new schools paved the way for new urban growth. New residents in turn were governed in their choice of housing by established patterns of residential segregation. They also were attracted to one or another

zone by the opportunity to avoid school desegregation. Blacks new to the area and young black adults native to Richmond in the meanwhile were more restricted in choice of housing sites. Overall, the area's population expanded, and over time black residents, with fewer options so far as housing was concerned, comprised a greater and greater proportion of the city's residents, while the area's whites occupied the suburban counties."

B. Other Forms of Public and Private Discrimination Also Contributed to the Concentration of Blacks in the Richmond School District.

State and local school authorities are not the only officials who bear responsibility for the concentration of blacks in the Richmond School District.

The district court found, for example, that all public housing projects except one in the Richmond metropolitan area are principally black and are located in predominantly black areas of Richmond.[17] While Chesterfield and Henrico are empowered to create public housing authorities and establish public housing, they have failed to do so,[18] notwithstanding the fact that 11 per cent of the housing units in each jurisdiction are substandard (Pet. A. 495a-496a). "Both counties have stated their opposition to public housing within their borders" (*id.* at 496a). In addition, both counties have blocked the operation of the federal rent supplement program—a companion to public housing—by failing to take the steps required to qualify (*id.* at 493a; see Tr. E-35-42). Similarly, large-lot zoning in the counties has made it necessary for less

[17] Hillside Court, a public housing project in Richmond, was built for whites (Pet. A. 495a).

[18] Section 36-4 of the Code of Virginia creates a housing authority for each city and county, leaving it to the local governing body to actually bring such authority into operation. See *Mumpower* v. *Housing Authority*, 176 Va. 426, 11 S.E.2d 732, 739 (1940).

affluent blacks to seek zoning variances in order to build there (Tr. L-195, 197; Pet. A. 513a).

The story has been the same in public employment. The evidence shows that there are 635 administrative (white collar) positions in the Henrico County Government. Of these, 615, or 98.6 per cent, are held by whites (P.X. 107). Seventy of the jobs are appointive and only one black, who was appointed in 1970, holds such a position (*id.*). In Chesterfield there are 293 administrative jobs. Of these, 286, or 97.62 per cent, are filled by whites (P.X. 107B). The district court found that "public employment in Henrico and Chesterfield Counties over the years has been available almost exclusively to whites" (Pet. A. 510a). This discrimination has not only foreclosed important employment opportunities for blacks, but has also established a power structure, ranging from the police through the county boards of supervisors, that is likely to be regarded as uncongenial and unresponsive to black residents.

Public transportation policies have constituted another spoke in the wheel of discrimination. "Very scanty" public transportation within the large geographical area of Chesterfield and between Chesterfield and Richmond makes jobs in the county less accessible to poor persons living in Richmond or in the county, and jobs in Richmond less accessible to poor persons living in the county (Pet. A. 514). This has the greatest impact on blacks who make up the greatest percentage of the poor in the Richmond area (Pet. A. 503a).

In addition, state imposed restrictions on interracial contacts have served to reduce the mobility and opportunities of blacks and to intensify clustering by race. During the period of massive resistance and in some cases even beyond that period, segregatory laws remained in force notwithstanding the spate of decisions by this

Court striking down all forms of official segregation.[19] Virginia's laws required segregation in any place of public assemblage, segregation of fraternal benefit societies, segregation on all public transportation,[20] segregation in virtually every type of institution operated by the State, and separate treatment, according to race, by taxing and polling authorities. Interracial marriage was criminal and void.[21] Organizations advocating racial integration were required to register with the state.[22]

The evidence also shows that brokers,[23] title insurance companies,[24] and newspapers,[25] all had a hand in promot-

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[19] See *Watson* v. *Memphis*, 373 U.S. 526 (1963), and cases cited therein at 530 n.2.

[20] *Boynton* v. *Virginia*, 364 U.S. 454 (1960).

[21] *Loving* v. *Virginia*, 388 U.S. 1 (1967).

[22] *NAACP* v. *Button*, 371 U.S. 415 (1963). See Code of Va. § 18.1-356 (repealed 1970); § 38.1-597 (repealed 1968); §§ 56-326 to 328 (repealed 1970); §§ 56-390 to 404 (repealed 1970); § 22-221 (repealed 1971); §§ 23-10 to 12 (repealed 1971); § 20-101; § 58-880 (repealed 1970); § 24-120 (repealed 1970); §§ 20-50 to 60 (repealed 1968); § 18.1-381. See also "A Compendium of Racially Discriminatory Laws of the State of Virginia." (P.X. 114).

[23] The district court found, *inter alia*, that although the membership requirements for the "Richmond Board of Realtors, a private group of real estate brokers, have no relation to race, there has been and still may be, according to uncontradicted testimony, a clause in the code of ethics of the realtors to the effect that one could not disturb the white community by selling property therein to blacks, although certain areas of the city would be offered to non-whites by all realtors once the board of realtors determined that an area was one of transition and a home had been sold to blacks in a particular block, and that block was determined by the board to have been 'broken'" (Pet. A. 171a-72a).

[24] On November 7, 1969, the Civil Rights Division of the U.S. Department of Justice requested Lawyers Title Company of Richmond to terminate its policy of requiring that racial restrictions continue to be included on documents of title. (Pet. A. 515a). See *Mayers* v. *Ridley*, 465 F.2d 630 (D.C. Cir. 1972).

[25] On March 6, 1970, the Civil Rights Division of the U.S. Department of Justice requested the Richmond Times Dispatch and the

ing residential segregation in the growth period after *Brown* (Pet. A. 506a-507a, 514, 515a).[26] It is only reasonable to conclude that the State's massive resistance posture and its pervasive segregation laws promoted and reinforced this private discrimination that contributed to the interdistrict segregation in the Richmond metropolitan area.

C. The Court of Appeals Had No Foundation for Overturning the District Court's Conclusion That It Had the Power To Order a Remedy for the Interdistrict Segregation in the Richmond Metropolitan Area.

The facts adduced at trial, as we have shown, warrant the district court's conclusions that "[s]chool construction policy has constributed substantially to the current segregated conditions" (Pet. A. 200a) and that "officials of the City of Richmond, Counties of Chesterfield and Henrico, as well as the State of Virginia, have by their actions directly contributed to the continuing existence of the dual school system which now exists in the metropolitan area of Richmond" (Pet. A. 379a). The court of appeals "accept[ed]" findings that "there has been state (also federal) action tending to perpetuate apartheid of the races in the ghetto patterns throughout the city,

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Richmond News Leader to discontinue use of a separate column at the beginning of the classified advertisements for homes for sale which was commonly understood as indicating houses for Negroes (P.X. 42A). This policy was discontinued as of February 1, 1971 (P.X. 42C).

[26] Lawyers Title Insurance Company files show that in Chesterfield 37 subdivisions, accounting for 3,323 lots, had restrictive covenants (C.X. 37). In Henrico 78 subdivisions, accounting for 14,154 lots, were burdened with restrictive covenants (Tr. Q-6; Pet. A. 509a.). The district court found that the Federal Housing Authority encouraged and perpetuated housing segregation until at least 1947 when it removed "the caveats in its underwriters' manual advising appraisers about the dangers of 'inharmonious racial groups'" (Pet. A. 488a-89a).

and that there has been state action within the adjoining counties also tending to restrict and control the housing location of black residents" (Pet. A. 572a). The court of appeals "agree[d]" that "there has been some inaction, (*e.g.*, non-participation in construction of low income housing) by the counties here which may have restricted the access of blacks to residences in these counties" (*id.* at 574a), and that "[f]ormer FHA policies and the use of racially restrictive covenants have doubtless had an impact on residential housing patterns within the city and the counties" (*id.*).

Notwithstanding its acceptance of these district court findings, the court of appeals reversed. It did so, apparently, on two grounds: (1) that "neither the record nor the opinion of the district court even suggests that there was ever joint interaction between any two of the units involved (or by higher state officers) for the purpose of keeping one unit relatively white by confining blacks to another" (id. at 572a); and (2) that it was not established that the racial composition of Richmond and the counties is the result of invidious state action (*id.* at 582a).

We show below that the court erred on both counts.

1. ***The Court of Appeals Erred in Holding That the Power To Remedy Interdistrict Segregation Depends Upon a Showing of Joint Interaction by Two Arms of the State for a Discriminatory Purpose.***

The court of appeals erred in brushing aside the district court's findings for want of a showing that "there was ever joint interaction between any two units of the units involved (or by higher state officers) for the purpose of keeping one unit relatively white by confining blacks to another" (Pet. A. 572a). That approach is inconsistent with the Fourteenth Amendment.

To the extent that the court of appeals was holding that a purpose to cause interdistrict segregation was essential to any constitutional violation, this Court's decision in *Wright* v. *Council of City of Emporia*, 407 U.S. 451 (1972)—decided subsequent to the court of appeals decision below—provides a complete answer. In *Wright* this Court held that the district court properly focused on the impermissible discriminatory effect of a city's decision to secede from a school district, stating that "[t]he existence of a permissible purpose cannot sustain an action that has an impermissible effect." 407 U.S. 451, 462.

To the extent that the court of appeals was holding that official discrimination having interdistrict segregatory effects must be joint interaction between districts (or between two state officials) before it is remediable, the court of appeals also erred. "[T]he prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see *Virginia* v. *Rives*, 100 U.S. 313; *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia*, 353 U.S. 230; *Shelley* v. *Kraemer*, 334 U.S. 1; or whatever the guise in which it is taken, see *Derrington* v. *Plummer*, 240 F.2d 922; *Department of Conservation and Development* v. *Tate*, 231 F.2d 615." *Cooper* v. *Aaron*, 358 U.S. 1, 17 (1958). The Fourteenth Amendment does not require "joint interaction" between agents of the State before the effects of discriminatory actions of the State or its agents can be remedied.[27] We know of no reason or authority to support the view that where effects of this type stem from

[27] Local school officials are only derivatively subject to the Fourteenth Amendment. "From the point of view of the Fourteenth Amendment, they stand in this litigation as agents of the State." *Cooper* v. *Aaron*, 358 U.S. 1, 16 (1958). See also *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Iowa-Des Moines Bank* v. *Bennett*, 284 U.S. 239, 244-45 (1931).

independent acts of discrimination, they are exempt from the reach of the Fourteenth Amendment and can be perpetrated with impunity. Such an exemption would be inconsistent with this Court's ruling that in a desegregation case, the district court " 'has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past. . . .' *Louisiana* v. *United States*, 380 U.S. 145, 154." *Green* v. *County School Board*, 391 U.S. 430, 438, n. 4 (1968).

2. *The Court of Appeals Had No Basis for Overturning the District Court's Finding That Official Discrimination Contributed Substantially to Interdistrict Segregation in the Metropolitan Area.*

The court of appeals expressly approved many of the district court's findings of invidious official discrimination in the Richmond metropolitan area. That court, however, ruled against plaintiffs on the ground that they had failed to establish that this discrimination was the cause of the racial composition of Richmond and the counties (Pet. A. 582a-83a). The court of appeals, we submit, had no foundation for overturning the district court's contrary finding.

a. The court of appeals ruled that if the trial judge concluded that the "counties were . . . keeping blacks in Richmond schools while allowing whites to flee to relative white sanctuaries . . .," the facts do not support his conclusion. (Pet. A. 573a). In support of its ruling, the court of appeals relied upon defendants' survey of the number of black and white children enrolled in the county systems in the spring of the 1970-71 school year who had transferred directly from the Richmond system (*id.*).

As to blacks, the survey, if anything, serves to confirm that discriminatory official policies had an impact

on the residential movement of blacks. As to whites, the survey is incomplete and inconclusive.

With regard to the impact on blacks, the survey shows that during the preceding decade only 532 black children transferred directly from Richmond schools to Henrico schools and that, in the preceding 12 years, only 36 black school children transferred directly from Richmond to Chesterfield (*id.*). The study does not deal in any way with 105,764 blacks living in Richmond in 1970 (R.X. 57A), including 30,097 black children in the Richmond schools (R.X. 75). The survey does not bear in any material way on the confining effect that official discrimination had upon these blacks in the City of Richmond.

The survey, moreover, does not negate the influence of official discrimination on the abrupt departure of 2,505 or more school children who enrolled in the Richmond schools for the 1970-71 school year but had left the system as of February 16, 1971 (Tr. N-181-182). It shows only that most of these children did not immediately land in county schools. Inasmuch as families may not have been able to relocate immediately, it is possible that many of these children spent an interim period in a private school before enrolling in county schools. Furthermore, the study was made before another 3,703 white school children left the Richmond schools in 1971-72 when Plan III took effect (Pet. A. 573a). Nor did the survey cover all the white children in county schools whose parents left Richmond while the children were of pre-school age. These children may well constitute a substantial number.

The discriminatory effects of official policies were not confined, as the court of appeals seems to suggest, to the impact of those policies on the residential choices of blacks and whites living in the metropolitan area. Rather, those policies also must have influenced white and blacks

entering the metropolitan area from outside or considering such entry.

The survey takes no account of such effects. It does not indicate the number of blacks who would have moved into the counties but for the discriminatory official policies.[28] Nor does it measure the effects of those policies on the large numbers of whites living outside the metropolitan area who chose to relocate in the white counties rather than the city.[29]

In short, the survey did not cover major population groups—blacks in the center city and newcomers of both races—who constitute the vast majority of the area's population. It failed to establish that the large number of whites who left the Richmond system in 1970-71 and 1971-72 did not or will not ultimately enter the county schools. Nor did it in any way deal with the motivations of persons living outside the metropolitan area who considered but decided against moving into the area. In sum, the survey did not negate the foundation for the district court's conclusion—resting on facts summarized in Section A and B of this Part II of our brief—that official discriminatory policies were in substantial measure responsible for the area's interdistrict segregation.

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[28] As the district court found, based upon the testimony of expert witnesses: ". . . it is clear that non-economic causes lie behind at least a very substantial amount of the segregation. . . . Dr. Tauber, and the Court, are led to the conclusion that publicly and privately enforced discrimination accounts for the remainder." (Pet. A. 480a-481a). "With respect to persons moving into a community as new residents. . . . Dr. Tauber stated, and the Court finds, that such people are very much governed in their decision upon housing sites by existing patterns of customs and restrictions" (Pet. A. 482a). "Dr. Sloane stated as well, and the Court finds, that existing patterns of segregation substantially influence the choice of housing site by a new entrant into the community" (Pet. A. 491a).

[29] The counties, which are now more than 91.6 per cent white, experienced a combined population increase of 136 per cent between 1950 and 1970 (R.X. 57A).

b. The record showed increasing segregation in the metropolitan area and official discrimination limiting the opportunities of blacks for schooling, housing and employment outside the center city. Common sense dictates that on this record the district court correctly concluded that such discrimination contributed materially to the existing racial separation in the Richmond metropolitan area. Where the plaintiffs have shown that racial discrimination has been pervasive at every tier and branch of government, and have demonstrated that such official discrimination has the effect, or even the potential effect, of contributing substantially to interdistrict school segregation, it is unreasonable to require the plaintiffs to sort out and identify the extent to which such discrimination has contributed to that segregated condition. The proper approach in such a case is that taken by this Court in *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1 (1971). There, this Court held, in an intradistrict case, that there is "a presumption against schools that are substantially disproportionate in their racial composition," and that the trial court "should scrutinize such schools," and place "the burden upon the school authorities . . . to satisfy the court that . . . [the racial identity of the schools] is not the result of present or past discriminatory action on their part." *Id.* at 26. In short, the defendants must "disentangle the consequences for which [they are] chargeable" or bear responsibility for the whole. *NLRB* v. *Remington Rand, Inc.*, 94 F.2d 862, 872 (2d Cir. 1938), *cert. denied*, 304 U.S. 576 (1938).

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III

The District Court's Order Requiring Merger of the Three School Districts Was an Appropriate Exercise of Its Equitable Discretion To Remedy the Constitutional Violation

In the case at bar, the district court ordered merger of three school districts, following the state law to the maximum extent possible.[30] This order is based upon substantial evidence, indeed compelling evidence, that only an interdistrict remedy could "eliminate from the public schools all vestiges of state-imposed segregation." *Swann*, *supra* 402 U.S. at 15. It is further supported by evidence that the school districts involved are constituent parts of a single metropolitan community.[31] So too, the evidence shows that in the past there had been extensive interdistrict cooperation and even school district consolidation aimed sometimes at maintaining the dual system in Virginia and on other occasions at achieving legitimate educational objectives.[32] Thus, the district court's remedy is essentially co-extensive with techniques the

[30] In 1970 the State Legislature, aware that this case was pending before the district court, enacted legislation conditioning the State Board of Education's power to establish appropriate school divisions and to create a single school division encompassing more than one school district. Under the new enactment, all such consolidations must be ratified by the school boards and governing political bodies of the political subdivisions affected. See 9 Va. Code § 22-30 (Cum. Supp. 1971); Va. Const. Art. VIII, § 5(a), as revised (1970). See also Judge Winter's dissenting opinion (Pet. A. 586-587a, n.3) and the district court's findings (*id.* at 227a-228a). Judge Winter points out that "in all respects the order of the district court complied with the provisions of existing state law, save only that of the requirement of consent of the school boards and governing bodies of all of the affected political subdivisons" (*id.* at 587a, n.3).

[31] See note 8, *supra*.

[32] Pet. A. 193a-195a; 352a-356a; 360a-364a.

State has used to foster segregation and to pursue legitimate educational objectives. These matters, we understand, are being treated fully in the briefs of the petitioners, and accordingly will not be discussed further here.

In this section, we show that the merger required by the district court's order has many educational advantages. It is in accord with the recommendations of the President's Commission on School Finance and the Report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education (the Fleischmann Report). It is also in accord with the State Board of Education's policy of encouraging school consolidations (Pet. A. 274a).

A. Background.

A "distinctive feature" of American education in the past has been the degree of decentralization that has prevailed: "No other nation has so decentralized the administration of its schools."[33] During the 19th century, when the nation was predominantly rural, most school districts simply defined the area served by a single school. President's Commission on School Finance, *Schools, People & Money: The Need for Educational Reform*, p. 68 (March 3, 1972). In recent times, however, educators have sought to draw school district lines in a manner that will increase the quality of education in addition to defining the service area of a school system. Today we recognize that "the size and shape of school districts often affect the quality of the education they deliver to their children." *President's Commission, supra*, p. 68. And we now recognize that there are substantial educational and

[33] National Committee for Support of the Public Schools, "The Reorganization of Local School Districts" (Fact Sheet) (June 1967).

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economic advantages to be derived from the merger and consolidation of school districts. As the President's Commission on School Finance found (*id.*):

> "In recent years, educators have sought and often achieved redesign of school district boundaries to achieve educational objectives. Small districts were combined to produce larger ones so that administration would be more efficient. Districts were also made larger to allow them to support large high schools that could offer a wider range of courses and such high-cost facilities as laboratories and swimming pools. Big cities often put all their schools into single districts."

Thus, since 1932 there has been a dramatic change in the number and size of school districts. In 1932 there were more than 125,000 school districts.[34] Today there are only 17,500 school districts. *President's Commission, supra*, p. xix.

The consolidation of school districts throughout this country has not been limited to rural school systems. While those systems have much to gain through merger, many urban systems, including Charlotte and Winston-Salem, North Carolina, and Nashville, Tennessee, have consolidated with outlying areas.

The school district established by the court below would encompass an area 752 square miles and have an enrollment of 104,000 students (Pet. A. 402a, 430a).[35] In

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[34] American Association of School Administrators, *School District Organization*, p. 1 (1962).

[35] In Virginia many, but not all school districts, are coterminous with a political subdivision such as a county or city. The State Board of Education favors consolidation of school systems (Pet. A. 274a) and, in the past, 28 school divisions have served more than one political unit (Pet. A. 279a). Moreover, there is no organizational reason why school districts must be coterminous with a single political subdivision. According to the Bureau of the Census, in 1967, there were 4,422 school districts each serving

terms of area the new district would be comparable to or smaller than six Virginia districts which cover more than 700 square miles (Bedford, Chatham, Charlottesville, Halifax, Harrisburg and Staunton) and would be smaller in student enrollment than the Fairfax County, Virginia, school district which presently enrolls 135,948 students. The U.S. Bureau of Census reported in 1966-67 that there were at least 577 school districts in the country having an area of 700 square miles or more. U.S. Dept. of Commerce, Bureau of the Census, *1967 Census of Governments Report on Governmental Organization* (Volume 1). The district court found that in fall 1970 there were 163 school districts having enrollments between 25,000 and 99,000 students and about 28 school districts having enrollments of more than 100,000 students (Pet. A. 432a).

B. Educational Advantages of Consolidation.

Broadly speaking, urban mergers offer important educational advantages: (1) a greater opportunity for heterogeneous grouping; (2) a greater opportunity to offer specialized programs that depend upon a large pupil population base; and (3) an opportunity for achieving a more stable tax base.

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an area with the same boundary as those of some other local government. These coterminous school systems accounted for 16.8 million pupils, or only 28 percent of all public school enrollment. The remaining 18,968 school districts, comprising 86 per cent of all independent school districts and 20 per cent of the dependent school systems, served areas that did not correspond directly to those of any other local government. The noncoterminous school systems included 3,439 classed under the heading "municipal," for which an enrollment of 16.6 million pupils was reported. Most of the "municipal" systems included an entire municipal area as well as some adjacent territory. Some embraced only a portion of a municipality. These municipal systems included 789 systems that provided school services to cities of 25,000 population or more. U.S. Department of Commerce, Bureau of the Census, *1967 Census of Governments Report on Governmental Organization* (Volume 1).

1. *Heterogeneous Grouping.* As to the first point, the President's Commission on School Finance recommends that "States reorganize their school districts to encompass within each one, wherever possible, children of diverse economic, racial and social backgrounds." In the Commission's view, heterogeneity is the first of "two prime considerations" to be taken into account in reorganizing school districts. The Commission attached great importance to this factor because, as it found, "economic or ethnic isolation of children reduces the ability of school systems to provide equal educational opportunity and quality education." *President's Commission, supra,* p. xix.

> "Research results are not yet conclusive on the effect of the socio-economic backgrounds of other students on a child's educational achievement. However, it is becoming increasingly apparent that the student-mix within a school exerts a strong influence on learning patterns of the total student body. A student body reflecting different social, economic, ethnic and cultural family backgrounds tends to improve the learning of lower achieving students.
>
> "Accordingly, the Commission concludes that the effect of the student-mix appears to be such that equal educational opportunity is enhanced in a heterogeneous student body. Moreover, such a student body better prepares all its members for productive and creative participation in a free society." *Id.* at 15.

See also Coleman, et al., *Equality of Educational Opportunity* (U.S. Office of Education) 1966; Havighurst & Levine, *Education in Metropolitan Areas* (1971), pp. 121, 250.

Similarly, the Fleischmann Commission noted that the district court's decision in this case, if affirmed, "should create greater stability in individual urban schools by curtailing the incidence of white migration to the suburbs in search of racially segregated schools." *Report of the New York State Commission on Quality, Cost and Financing of Elementary and Secondary Education,* p. 4.82

(1972). The Commission recommended that the State Legislature of New York "facilitate consolidation of school districts to achieve desegregation as well as eliminate statutory obstacles to cross-busing of children across district lines for the same purpose" and that, pending such legislative corrections, the Commissioner of Education "should begin to examine segregation as a regional problem and work out regional solutions where needed." *Id.* at p. 4.14.

So too, in the Emergency School Aid Act of 1972, Congress adopted a program for funding metropolitan area wide approaches to public schooling.[36]

2. *Special Programs.* Educators are generally agreed that, as the pupil population rises, so does the opportunity and wherewithal to provide special programs. Programs requiring expensive machinery or highly trained specialists become feasible only when there are substantial numbers of children to be served. Examples of such programs are vocational education, business training, technical training, educational television and data processing.[37] Mergers materially increase the school district's capacity to provide such programs.

These gains resulting from increased school district size are confirmed by a "Survey of Programs & Practices of Public School Systems" conducted in May 1971

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[36] Public Law 92-318, 20 U.S.C. § 1608 *et seq.* Congress sought to encourage area-wide projects "to reduce and eliminate minority group isolation," 20 U.S.C. § 1609(a)(2), and to foster the development of educational parks "of sufficient size to achieve maximum economy of scale" and an "enrollment in which a substantial proportion of the children is from educationally advantaged backgrounds and which is representative of the minority group and nonminority group children" of the districts in the Standard Metropolitan Statistical Area. 20 U.S.C. § 1609(a)(3).

[37] Speech delivered to the American Association of School Administrators on February 20-24, 1971 by its Associate Secretary, Dr. Robert M. Isenberg. See also *President's Commission*, p. 69.

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by the NEA Research Division.[38] The report of the survey shows that larger systems of 25,000 or more students, lead medium (3,000-24,999 students) and small (300-2,999 students) systems in the provisions of special programs:

Percentage of Large, Medium and Small School Systems Providing Special Programs in May 1971

	% Large	% Medium	% Small
Year Round School	3.6	0.7	0
Summer Work Developing Curriculum 1966 to 1971	62-72	37-44	13-15
After School Study Centers	44	20	12
Evening School for Potential Dropouts	50	13	5
Humanities Courses (Secondary)	85	60	49
Nongraded Organization	70	38	12
Nursery School	23	7	4
School-Job Coordination:			
Distributive Education	95	65	18
Diversified Occupation	72	35	13
Industrial Coop Training	75	47	17
Job Corps	19	10	7
Vocational Office Training	89	64	37

3. *Fiscal Stability.* In recent years educators also have been encouraging school districts in metropolitan areas to merge and consolidate as a means of achieving a stable economic base for public education. The President's School Finance Commission, like numerous others, has pointed out that "the big cities of the Nation are rapidly being left to the poor and untrained" (*President's Commission, supra*, p. xiv). Thus, the migration of the middle class

[38] Survey available from NEA Research Division.

from the central city is undermining the ability of urban school districts to pay for quality education.[39]

In 1968 the Advisory Commission on Intergovernmental Relations—a bipartisan commission of federal, state and local officials—proposed model state legislation which would metropolitanize school districts. Their stated purposes were, *inter alia*, (1) to "eliminate the accidents of local property tax geography"; (2) to "remove the possibility that industrial enclaves and local fiscal zoning will shield certain property from the legitimate burdens borne by the wider community for public schools"; and (3) to enlarge the financial base for meeting the educational needs of large numbers of "high-cost" students (i.e., students from lower socio-economic levels) located in the central city.[40]

In March 1972 the President's Commission on School Finance found that the second most important consideration in school district reorganization was creation of a district "large enough to encompass to the extent possible a distribution of wealth comparable to that of the State as a whole. This would reduce disparities and make more economical the provision of specialized educational programs." (*President's Commission, supra*, p. xix).[41]

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[39] Suburban communities are also adversely affected. Pennsylvania's State Secretary of Education reports that this migration "in many instances" renders new suburban school facilities overcrowded "almost as soon as opened." Speech of Dr. David H. Kurtzman, delivered to American Association of School Administrators, February 20-24, 1971. See also Havighurst & Levine, *supra*, pp. 138-42.

[40] Advisory Commission on Intergovernmental Relations, *State and Local Finances—Significant Features 1966 to 1969*, p. 202-1 (November 1968).

[41] Merger of the three districts is not inconsistent with community control of schools. Thus, the plan adopted by the district court provides for division of the Richmond metropolitan area system into six administrative subdivisions, each with considerable local autonomy. Subdivision directors would supervise instruction, make decisions concerning curriculum and maintain "close contact

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CONCLUSION

For the reasons set forth in the preceding pages, the National Education Association urges this Court to reverse the decision of the court of appeals and to hold (1) that the court of appeals erred in overturning the district court's findings that discriminatory actions and policies of State and local authorities contributed materially to the interdistrict segregation currently existing in the Richmond metropolitan area, and (2) that the district court did not exceed its power or abuse its discretion in ordering merger of the three districts as a remedy for the continuing effects of the official discrimination.

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with parents of children in their schools" (Pet. A. 431a). The plan would permit each subdivision to establish a lay-advisory school board in order to involve local residents in the decision making process. The court found that the decentralization permitted by the plan would "lead to better communication between the patrons and administrators." (*Id.*). For examples of large school systems which have provided for similar administrative decentralization and community participation, see "Decentralization and Community Involvement: A Status Report," ERS Circular No. 7 (1969).

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MAR 13 1973

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

Nos. 72-549 and 72-550

RICHMOND SCHOOL BOARD, *et al.*,

Petitioners,

—v.—

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, *et al.*,

Respondents.

CAROLYN BRADLEY, *et al.*,

Petitioners,

—v.—

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA, *AMICUS CURIAE*

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RIEF OF AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA, *AMICUS CURIAE*

Interest of *Amicus Curiae*

The American Civil Liberties Union and the ACLU of Virginia have secured the consent of the parties to the filing of the attached brief *amicus curiae*. The letters of consent have been filed with the Clerk.

The American Civil Liberties Union is a nation-wide non-partisan organization of over 180,000 members dedicated solely to preservation of the liberties safeguarded by the Bill of Rights and the 13th, 14th and 15th Amendments to the United States Constitution. The American Civil Liberties Union of Virginia is a state affiliate of the ACLU.

The ACLU and the ACLU of Virginia have been particularly concerned with the pervasive effects of racial discrimination and segregation on American society. They participate in numerous law suits challenging racial discrimination and segregation. They take the position that effective racial integration of the public schools is a necessary prerequisite to the full and equal protection of the laws for Americans of all races and colors.

In this brief, the ACLU and the ACLU of Virginia provide additional focus on the issues in this case which go well beyond the facts of the particular case. They hope thereby to place these issues in the larger perspective.

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ARGUMENT

This latest aspect of an old school desegregation suit involves the equitable powers of the federal courts to give full and meaningful relief against the continued effects of *de jure* school segregation. Within its record, the case presents questions concerning the power of federal courts to fashion remedies that consolidate school systems that are separated by lines drawn by state government to secure non-education interests. For in this case, the petitioners were ordered by the District Court below to consolidate, for the purpose of creating a unitary integrated school system, the effectively segregated separate school systems of the City of Richmond and the adjacent Chesterfield and Henrico counties. The Court of Appeals reversed. In this brief we take the position that the decision of the District Court was eminently sound—indeed it is required by the principles contained in decisions of this Court—and it should be reinstated.

I.

The children of metropolitan Richmond are denied equal educational opportunity because their schools are racially segregated.

"Separate educational facilities are inherently unequal." *Brown* v. *Board of Education*, 347 U.S. 483, 495 (1954). "To separate [black students] . . . generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . . Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental

development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system." *Id.* at 494.

We submit that at the heart of the *Brown* principle is what Edmund Cahn once labeled as the "consumer perspective," Cahn, *Law in the Consumer Perspective*, 112 U. PA. L. REV. 1 (1963); Cahn, *The Predicament of Democratic Man* (1961). The "consumer perspective" simply insists that the most valid judgment which can be given about institutions is given by those people whom they are intended to serve—i.e., the "consumer" of that institution's services; in this case, black students of segregated schools.

If schools are identifiably "black" or "white," if they are more than "just schools," *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 442 (1968), the injury so zealously to be guarded against under *Brown* occurs. And the identifiability of schools, together with the resultant injury occasioned by them, is largely a matter of a child's perception. If a child can say (or see or feel) "This is one of Richmond's black schools—and this is one of Richmond's white schools," the school is, within the meaning of *Brown* and its progeny, a segregated school.

Given the factual context of this case, a child attending any metropolitan Richmond school knows whether his school is a white one or a black one. He also probably lives within a half hour of the center of the city. Either his parents or his neighbor's parents work within the city limits. No matter where he lives in the metropolitan area, the child will go to the hospital in the center of the city if he is ill, and his parents are likely to go into the city center for entertainment. There are no definite natural

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ographical boundary lines which divide up the city, and e political lines constantly shift with each new annexion. The only clear physical demarcation between varis parts of the metropolitan area is that people living ar the center of the city are predominantly black and ople living further away are predominantly white; or, put it in terms of the child's perspective—people living ar the center attend "black" schools, and people living rther away attend "white" schools.

The population of the metropolitan Richmond area is proximately 33% black and 67% white, and this ratio s remained fairly constant over the past decade. If a ild were in a school with a similar proportion of black d white students, he would not perceive it as "black" "white" but as reflecting the metropolitan Richmond ciety in which he lives. Thus, if we assume that only hools with student bodies of 20-40% black would reflect chmond society and thus would not be identifiable by e child as a "white" school or a "black" school, all the gh school students and 90% of all elementary and middle hool students attend schools in the metropolitan Richnd area identifiable by them as "black" or "white." The cial cohesiveness of the metropolitan area and physical oximity further assure such identification. Often high hools with a student body which is more than 75% black e located within four miles of high schools which are re than 80% white.

The black child, the "consumer," who attends schools Richmond perceives well enough that the schools are her "black" or "white" schools. And it cannot be said t the child's perception is incorrect. The State of Virnia has historically used every means within its control

to assure whites that their schools will remain white and to convince blacks that they will never attend any but black schools. Given this history, the State's latest refusal to desegregate its schools effectively is hardly surprising. Thus, until the remedial hearings in this case were pending, Virginia could and often did ignore political subdivision boundaries in setting up school districts. And the State exercised this power for every reason conceivable, including the furthering of segregation. When it was suggested that Virginia again exercise this power, but now to aid desegregation, the State responded by legislation purporting to divest itself of authority to act.

Nineteen years after *Brown,* not only today's black school children but their parents who were themselves school children in 1954 cannot help but understand full well the State's position when they take their children to one of "Richmond's" black schools. Despite promises, claims and hopes to the contrary, nothing can more eloquently remind them of "their place" than escorting their child to a school that remains what it always was—a black school designed to serve black children.

When almost every school in an area can be seen to be a "black" school or a "white" school, it is obvious that the schools are segregated. That this segregation is caused by the state's maintenance of evanescent boundaries does not alter the child's perception, his injury or the segregation. Indeed, plaintiffs produced a number of witnesses to testify to the actual educational harm done by this separation of the races. However, such evidence should not have been necessary because this Court has recognized for almost two decades that "Separate educational facilities are inherently unequal." *Brown* v. *Board of Education, supra,* 347 U.S. at 495.

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II.

The State of Virginia has denied plaintiffs the equal protection of the laws.

A. *The State Has Created the Segregated School System.*

State law creates and defines the boundaries of cities and counties. Such boundaries are often useful for the administration of many matters, but they need not coincide with school division boundaries. In fact, when this suit was instituted, there were a number of school divisions which included several political units in Virginia, and Virginia law permitted the State Board to consolidate school districts even if consolidation overlapped such political lines. Metropolitan school districts overlapping political lines are not uncommon elsewhere. For example, the City of Charlotte, North Carolina, and the County of Mecklenburg comprise a single school system. See *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). Nevertheless, after institution of this litigation, Virginia state law was changed and now requires the State Board to divide the state into school divisions according to county and city boundary lines, unless the school boards and governing bodies of the political units affected agree to a joint school division. Va. Code sec. 22-30. To the extent that the State has delegated to local officials the power to determine the boundaries of the administrative units for schools, the exercise of those powers is still the State's responsibility and they must be exercised in conformity with the state's constitutional obligations. Regardless of the legal mechanism the result of that exercise of power in this case is clear—segregated schools. Having

created a segregated school system and having refused to exercise that power in a manner that would desegregate it, the State of Virginia and the Counties of Henrico and Chesterfield and the City of Richmond have violated their constitutional duty under the Fourteenth Amendment.

The question in this case, therefore, is not whether state action has resulted in a segregated school system—that clearly has occurred. Rather, the question is, having acted in such a manner as to segregate the races in fact, can the State demonstrate justification of a sufficiently compelling nature so as to excuse the effects of its actions? If such justification does not exist, then the school system is segregated within the meaning of *Brown* and the equity powers of the District Court below were properly applied to remedy the resultant segregation.

The Court of Appeals did not discuss this question. Applying the wrong legal rules, they instead deemed the relevant question to be the existence or non-existence of "racial motivation" or "segregative intent" as an explanation for the Respondents' behavior. This was error.

B. *The School Boundary Lines Are Unconstitutional Because They Operate to Discriminate on the Basis of Race and Are Not Justified by a Compelling State Interest.*

Although there are sometimes no obvious criteria for drawing lines, it is still useful to draw a line. This is the case with the political boundary lines in the Richmond area. There are no natural geographical boundaries dividing the area, and the lines which are imposed are flexible and subject to constant change through annexation proceedings. These lines are drawn to facilitate various political and social functions. But the criteria on which the lines are

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based are arbitrary, at least in the sense of whimsical. Such arbitrary lines are properly viewed with suspicion when their effect is to disadvantage blacks. Thus, courts have not permitted school attendance lines to be drawn around a residentially segregated neighborhood when other attendance zones are just as feasible. *Brewer* v. *School Board of City of Norfolk*, 397 F.2d 37 (4th Cir. 1968). Even attendance zones which follow natural or historical boundaries have been struck down when they operate to separate the races. See *Henry* v. *Clarksdale Municipal Separate School District*, 409 F.2d 682 (5th Cir.), *cert. denied*, 396 U.S. 940 (1969); *United States* v. *Greenwood Municipal Separate School District*, 406 F.2d 1086 (5th Cir.), *cert. denied*, 395 U.S. 907 (1969); *Clark* v. *Board of Education of Little Rock*, 426 F.2d 1035 (8th Cir. 1970); and *Monroe* v. *Bd. of Comm'rs of Jackson*, 427 F.2d 1005 (6th Cir. 1970). See also *Davis* v. *Board of School Commissioners of Mobile County*, 402 U.S. 33 (1971).

If the effect of the line drawing is racial segregation and the justification is weak, there is no need to probe the psychological motivation of a legislature and determine whether there was in fact a racial purpose. Anyone involved in such a classification will readily perceive that they are treated unequally, and courts will agree with the perception. See *Jackson* v. *Godwin*, 400 F.2d 529 (5th Cir. 1968); *Hawkins* v. *Town of Shaw*, 437 F.2d 1286 (5th Cir. 1971).

Where the effect of a classification is to separate the races, persons subject to the classification are likely to be severely harmed regardless of whether the classification was overtly on racial grounds or not. They should not be put to the burden of demonstrating an actual racial mo-

tive, intent or purpose. Further, it may prove impossible to prevent deliberate racial discrimination if the discriminator need only cite some rational basis not directly and obviously connected with race to support his action. Individuals and states then need only search for a slight apparent nonracial basis to continue segregation as before. Unless the state is forced to demonstrate substantial reasons for action which has a racial effect adverse to minority group members, the state can continue a policy of segregation behind a facade of neutrality.

This Court has construed statutes prohibiting racial discrimination in voting and employment from this perspective. See *Gaston County* v. *United States,* 395 U.S. 285 (1969). In *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971), an employer used a standardized test for hiring and promotion decisions. The district court found there was no racial purpose or invidious intent in adopting the test although whites generally did better than blacks in taking it, and by a split decision the Fourth Circuit Court of Appeals affirmed. Nevertheless, this Court found that the use of the test violated Title VII of the Civil Rights Act of 1964 which made it unlawful for an employer "to limit, segregate, or classify his employees in any way which would deprive . . . any individual of employment opportunities . . . because of such individual's race." The Court ruled that an employment test could be used only if it was in fact related to performance of the job, and that the employer's motive in using the test was not the significant question.

The issue in cases of racial discrimination thus at least becomes whether the classification or boundary line that operates to discriminate against blacks is justified by a

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compelling non-racial state interest. See e.g., *Loving* v. *Virginia*, 388 U.S. 1, 9 (1967); *McLaughlin* v. *Florida*, 379 U.S. 184 (1964).

In the instant case, when effect rather than "intent" is considered, and when Virginia's professed "justifications" are weighed to determine their compelling nature, it becomes clear that consolidation of these school districts is not beyond the remedial powers of a federal district court. Indeed, as Judge Winter pointed out in dissent below, this case is but the "obverse of the same coin" presented in the companion cases of *Wright* v. *City of Emporia*, 407 U.S. 451 (1972) and *United States* v. *Scotland Neck*, 92 S. Ct. 2214 (1972). There, as here, the Court of Appeals below applied the incorrect test—"segregative intent." In those cases the Court of Appeals permitted one district to be "split" into two school districts, ignoring all the while the segregative effects of such splitting. There, as here, focus on "segregative intent" rather than on "effect" led the Court of Appeals to conclude that no constitutional deprivation resulted despite demonstrable segregative effect. This Court reversed, holding that effect, not intent, was the proper test and that choice of a less effective alternative to desegregate schools in the face of available and proven effective alternatives placed a heavy burden of justification on the state. There, as here, no such compelling justification can be professed.

Whatever the State of Virginia's interest in maintaining the political boundary lines of Richmond City, Henrico County and Chesterfield County, it has no compelling interest in utilizing those lines for school administrative zones which result in segregated schools.

First, the State ignored political boundary lines to implement its earlier policy of segregation. From 1940 through 1968 at least four regional all-black schools were operated in the State. During this period many Virginia children were bused across county lines because the nearest school of their race was located in another county. Further, the State's tuition grant system enabled children to transfer out of their county school into one elsewhere, even in another state, where the children were of the same race.

Second, political boundary lines have often been ignored in the past to further other educational purposes. Richmond, Henrico and Chesterfield have cooperated in a training center for mentally retarded children and, with two other counties, in operating a mathematics-science center. On January 3, 1968, the State Board of Education resolved that "effective consolidation of school divisions is a prerequisite to quality public education in many areas of the state." Bedford County and Bedford City were thus allowed to form a single school division. Fairfax City and Fairfax County, while remaining separate school divisions, operate together under a contract with the County educating the city children.

The historic practice of combining several political subdivisions into one school division demonstrates that there is no compelling reason to maintain separate school districts and that the State of Virginia has not in the past considered the reasons offered in this case to be "compelling." Separate districts are clearly not necessary to give residents a voice in the education of their children. Nor are they necessary to assure the taxpayer that his money is being used for schools which his children attend.

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contract method of joint operation would also assure taxpayer that his moneys went to the education of his dren. Since there is no compelling reason to maintain e school boundary lines which separate children by , they should be struck down.

The State Cannot Use Political Boundary Lines to Limit the Federal Courts' Remedial Power Because the State Has Caused the Division of the Races by Those Lines.

irginia has for many years operated a dual system in the schools of the state. "Because they are Negroes, tioners have long received inferior education in seg- ated schools, and this Court expressly recognized these erences in *Gaston County* v. *United States.*" *Griggs* v. *e Power Co.*, 401 U.S. at 430. As the trial judge ted out in this case, inferior education leads to re- ted job opportunities; unskilled employment leads to ricted ability to choose a home. Thus, the segregated ols of the past started a pattern which largely re- ts blacks to the center of the urban area. Assuming efore that there was no significant racial distinction n the boundary lines were drawn, the state policy of egated education throughout most of this century has ed create the racial division which the lines now mark.

egregated schools also contributed to the present pat- s of residential segregation in other ways. "People vitate toward school facilities, just as schools are lo- d in response to the needs of people. The location of ols may thus influence the patterns of residential de- pment of a metropolitan area and have important im- on composition of inner city neighborhoods." *Swann Charlotte-Mecklenburg Board of Education,* 402 U.S. 0-21.

The State of Virginia contributed to the creation of residential segregation in many other ways as well. The State for many years enforced restrictive covenants, thereby encouraging people to impose them on the land to such an extent that much of the land in the metropolitan Richmond area today has restrictive covenants in earlier deeds. Notation of such a covenant was still common in title searches until within the last few years, even though the covenant could not be constitutionally enforced. Public housing was sited and occupied on the basis of race until recently. The counties provided schools, roads, zoning and development approval for the rapid growth of the white population in the county at the expense of the city, without making any attempt to assure that the development it made possible was integrated.

Even when state law no longer required absolute racial separation in the schools, and the massive resistance of Virginia to the court orders in *Brown* v. *Board of Education* had diminished, schools were still sited to produce segregation. As the trial judge found, "Construction in both counties has tended to correspond with the development of white and black residential areas, and in fact was so intended. . . . New construction was planned for black schools in the county without regard to the possibility of accommodating an expanding black pupil population in white schools." These acts in furtherance of segregated schools are within the power of the district court to correct. See *Swann* v. *Charlotte-Mecklenburg Board of Education, supra.*

The State ignored the boundary lines dividing the city from the counties in pursuing a policy of school and resi-

dential segregation which ultimately drove the blacks into the city and the whites into the counties. It should not be permitted to use a boundary ignored to create segregation in order to frustrate remedial measures for the earlier segregation. See *United States* v. *Indianola Municipal Separate School District,* 410 F.2d 626 (5th Cir. 1969).

It is encouraging to the principles of the Fourteenth Amendment that the state has not by its policies made integration impossible. The order of the trial judge demonstrates that feasible remedial measures can be implemented. See *Swann* v. *Charlotte-Mecklenburg Board of Education, supra.* The area involved is not so great nor is the additional transportation so significant as to hamper the education process if this Court affirms the consolidation order. Indeed, it is noteworthy that the strongest resistance to this order comes from the counties (the City of Richmond is a party plaintiff) where busing is commonplace because of the lower population density. But State-created segregation should not be tolerated, especially where its justification lies in arbitrary lines whose specific location serves only to mark off areas according to race. Nor should the mandate of the Constitution be circumvented because of any public outcry over court orders. See *Cooper* v. *Aaron,* 358 U.S. 1 (1958).

CONCLUSION

For the reasons stated in this brief, as well as in the opinion of the district court below, the judgment of the court below should be reversed.

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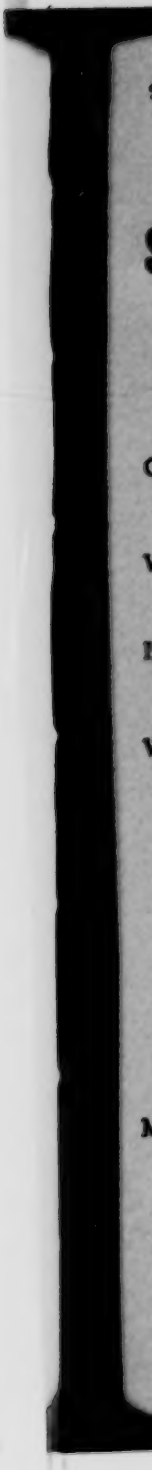

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MICHAEL RODAK, JR

IN THE

UPREME COURT OF THE UNITED STATES

October Term, 1973

No. 72-549
No. 72-550

TY OF RICHMOND SCHOOL BOARD,
Petitioner

v.

RGINIA STATE BOARD OF EDUCATION,
Respondent

ADLEY,
Petitioner

v.

RGINIA STATE BOARD OF EDUCATION,
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Brief for the Amicus Curiae National Suburban League, Ltd., In Support of Respondents

arch 13, 1973

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Brief for the Amicus Curiae National Suburban League, Ltd., In Support of Respondents

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at 462 F. 2d 1058. The opinion of the District Court for the Eastern District of Virginia, Richmond Division, is reported at 338 F. Supp. 67.

QUESTION PRESENTED

Whether a federal district court judge has exceeded his discretion in ordering consolidation of three independent and fully integrated school districts for the purpose of achieving further racial balance among the districts upon a finding that state action, to some extent, failed to encourage residential integration among the communities involved.

STATEMENT OF THE CASE

Until 1970, desegregation in the City of Richmond had consisted principally of a "freedom of choice" plan. On March 10, 1970, the plaintiffs initiated an action for further relief to secure city compliance with the most recent Supreme Court pronouncements on local obligations to desegregate. Several new plans were submitted to the district court before final approval was given to a plan implemented for the school year 1971-72 in Bradley v. School Board of the City of Richmond, 325 F. Supp. 828 (1971). However, in November, 1970, the plaintiffs, along with the City of Richmond, compelled joinder with Chesterfield and Henrico Counties, amending its complaint to request relief embodying the consolidation of the three school districts into one. On January 10, 1972, the district court gave judgment for plaintiffs and the

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City of Richmond and directed that a large-scale plan of student transportation and racial balancing be carried out.

On June 5, 1972, the Court of Appeals for the Fourth Circuit reversed the judgment of the district court.

This Court granted certiorari on January 8, 1973, ___ U.S. ___, 41 L.W. 38, 35 L. Ed. 2d 255.

SUMMARY OF ARGUMENT

I. Desegregation cases decided since Brown have framed remedies to counteract state policies the direct object of which has been the continuance of a dual school system. The plaintiffs in this case have pointed to racial imbalances over a broad geographical area that are naturally reflected in the racial composition of the schools; however, plaintiffs are unable to show the critical existence of past or present state discrimination that may be rationally held responsible for such demographic variances.

II. The institutions of separate "white schools" and "Negro schools" held unlawful in Brown have been, or are being, eliminated "root and branch" in the communities involved. While it is true that the races could be spread more evenly over the geographical area, no constitutional doctrine so requires. Moreover, the consolidation orders of the district court cannot help but do violence to the neighborhood school, which traditionally draws much of its vitality from interaction with the surrounding community.

III. The national government is a government of delegated powers. Powers not delegated by the constitution to the national government are reserved to the states and the people. This constitutional formula has defined the federalism which characterizes the United States. Because of the reservation of powers to the states and the people, the states in turn have allowed local communities and units of government substantial autonomy and home-rule. This pattern of government has caused local democracy to be pervasive. A desegregation order should not do violence to local autonomy and home-rule authorized by state government.

ARGUMENT

1. A desegregation order of sweeping impact should be founded on a clear showing of systematic and purposeful discrimination by state officers in the operation of the school system. A constitutional violation cannot be demonstrated by inconclusive or equivocal evidence of discriminatory state action, nor can the stigma of "history of discrimination" be invoked to change radically the import of evidence or the judicial approach.

The "governing law" in this case is supplied by the landmark desegregation cases. Brown v. Board of Education (Brown I), 347 U.S. 483 (1954); Brown v. Board of Education (Brown II), 349 U.S. 294 (1955); Green v. School Board of New Kent County, 391 U.S. 430 (1968); Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971). The principles of these cases, if not their practical applications, may be stated with relative simplicity. Brown I held that schools which are racially segregated by law are "inherently unequal," depriving segregated pupils of "the equal protection of the laws

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guaranteed by the Fourteenth Amendment." 347 U.S. at 495. The Court stated that equalization of tangible factors was not enough because the very existence of separation solely because of race "generates a feeling of inferiority as to their status . . . unlikely ever to be undone." Id. at 394.

Brown II urged that desegregation must be undertaken "with all deliberate speed," 349 U.S. at 301, in keeping with the constitutional principles of Brown I.

In Green, a token freedom of choice plan had left the dualistic status quo substantially unaltered. Eighty-five percent of the district's Negro children still attended the old Negro schools, while no white child had transferred to a Negro school. The Court ordered that steps to achieve significant racial mixing be undertaken. Green did not, in effect, mandate transportation of students at the expense of the neighborhood school concept, because adoption of a true "neighborhood" plan throughout New Kent County would, in fact, have provided adequate racial mixing. However, Swann unmistakably authorizes racial mixing beyond that which would result from simple neighborhood assignments to "counteract the continuing effects of past school desegregation." 402 U.S. at 28.

It is noteworthy that the historical, static fact of past discrimination is not enough, and that continuing effects must be found. Thus, even a one-race school resulting from typical urban residential patterns is not per se unconstitutional, but rather "suspect." Such additional factors as location or size calculated to serve one race must be found. Id.

This proviso suggests that historical discrimination plus present racial "imbalance" do not automatically coalesce into a constitutional violation. The analysis is tighter than that. The factor of active state responsibility (through past or present conduct) is indispensable to a finding of violation of equal protection rights under the fourteenth amendment. Admittedly, the question is whether there is some causational nexus between past discrimination and present conditions, but the question may be of decisive importance. In the present case attention to the state action issue is extremely important.

In cases such as Swann and Green where large proportions of blacks continued to attend schools that had always been black, in other words, where the mandate to abolish the dual school system had not, as "implemented," appreciably affected the status quo, the nexus to invidious state action was obvious. The objectionable history was indistinguishable from the present. But in the instant case, the school districts which had enforced segregation have, under court order, undertaken to exterminate the practice. The status quo has indeed been disrupted.

The evidence of state action proferred in the Richmond case is largely of a different species and, accordingly, of different "historical" signifcance than the familiar heritage of de jure segregation that has underpinned the racial mixing orders in cases such as Green or Swann. Hence, the issue of state action is deserving of rigorous analysis and the easy reference to the "sordid history" of desegregation in Richmond. Bradley v. School Board of City of Richmond, Virginia, 462 F. 2d

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1058, 1075 (4th Cir. 1972), should not be permitted to obfuscate the profoundly different issues Bradley thrusts forward.

The plaintiffs must rest their case for consolidation on the assertion that concerted state action of a nature proscribed by Brown I is responsible for residential patterns showing a heavy concentration of blacks in the City of Richmond. The impact on schools is a "disproportionate" number of blacks served by the Richmond system. The constitutionally commanded remedy, it is suggested, is transportation of blacks out of the City and whites into the City to adjust the "imbalances" created by housing patterns. These arguments may be met by two points: (1) Any "invidious state action" exposed by the evidence is far too dilute and its implications far too equivocal to be held to be a significant cause of the prevailing residential patterns in the area; and (2) were it supposed that state authorities have indeed succeeded in an invidious plan to lock black citizens of the area within the confines of the City, the broad equal protection issues presented should not be pressed into the well-defined mold of the school desegregation case, confusing major issues of the day that must be kept distinct.

The specific allegations of state action responsible for the "imbalances" do not fit into any coherent pattern, but must be discussed individually. The dissenting opinion favoring affirmance of the district court opinion beginning at 462 F. 2d 1071 (Winter, J.), portrays Richmond's dilatory response to the mandate of Brown I and subsequent judicial proddings as the cornerstone of the state action showing.

> [Bradley] is a case in which the transition to a unitary system has been delayed, as a result of state action and state inaction, until the schools on either side of artificial political subdivision boundaries, when compared one to the other, can only be said to be racially identifiable and . . . constitute a dual system.

462 F. 2d at 1075.

The reasoning underlying this assertion is fuzzy indeed. As a chronological matter it can hardly be said that due to recent state "inaction" a "dual system" has come to pass. This is because the dual system made unlawful by Brown I dates far beyond the events since 1954. Neither can it be maintained that dilatory state action, admittedly inimical to the spirit of Brown I, has hastened or contributed to the development of the particular "dual system" to which the district court currently objects. If the source of the city-county racial imbalance is the exodus of whites to the suburbs, it is logical that prompter desegregation under Brown I would have aggravated this situation, assuming, arguendo, that school policies have anything to do with housing patterns. It is submitted that delay of Richmond authorities in integrating its school is not state action responsible for the situation under scrutiny here, namely, the uneven distribution of the races between the City and the counties.

Other instances of "state action" accumulated by the plaintiffs have at least some theoretical relationship to the demographic patterns of the area. The appellate court dissenting opinion characterizes these instances as "principally in the area of residential development." 462 F. 2d at 1075.

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The state conduct indicated may be further characterized as essentially passive: the counties took no active role in inhibiting basically private acts of housing discrimination (e.g., giving effect to restrictive covenants), nor did it take positive steps in the area of public-subsidized housing to encourage emigration by the urban poor to the suburbs. As the majority opinion of the Court of Appeals suggests, the forces that cause black concentration in the urban cores of cities throughout the nation are so diverse and powerful that it is extremely doubtful whether "better" conduct on the counties' part could have made an appreciable dent in current conditions. 462 F. 2d at 1066.

It presumes too much to lay at the door of "state action" in the fourteenth amendment sense the responsibility for black concentration in the City of Richmond. The constitutional argument could, of course, be made that the equal protection clause requires local governments to eliminate "root and branch" the existence of urban ghettos. Imposing such an affirmative duty as a remedy for "state inaction" would bring about unprecedented expansion of the constitutional notion of "equality," as well as enormous burdens on localities and the courts.

The merits of these issues cannot be discussed here. The immediate point is that the "wrong" of state policy tending to perpetuate urban ghettos, with the fitting remedy of state-instigated residential desegregation, compose one major constitutional issue. Of course, the ramifications of the two policies are not mutually exclusive. State conduct which effectively deprives members of one race of residential opportunities in a particular district

would indirectly affect the racial composition of the schools. But again, if residential discrimination is the enemy, remedies dealing with schools are the wrong weapons with which to attack: To require school desegregation in the present case in order to "remedy" housing segregation would throw into confusion the evolving doctrine of Brown I and would render uncertain the legal position of hundreds of communities that have never practiced de jure segregation.

Cases in which pronounced racial imbalances in schools stemming strictly from residential patterns have been held beyond the reach of Brown I and the fourteenth amendment would have to be re-opened. See, e.g., Bell v. School City of Gary, Indiana, 213 F. Supp. 819 (N.D. Ind. 1963), aff'd, 324 F. 2d 209 (7th Cir. 1963), cert. denied, 377 U.S. 924 (1964); Spencer v. Kugler, 326 F. Supp. 1235 (D. N.J. 1971), aff'd mem., 404 U.S. 1027 (1972).

In a matter of such intense public concern a holding that would blur the lines of analysis in the school cases or spawn a vaguely conceived "penumbra of Brown" area of litigation would be most inadvisable. In this regard the court warned in Swann:

> The elimination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage. It would not serve the important objective of Brown I to seek to use school desegregation

> cases for purposes beyond their scope, although desegregation of schools ultimately will have impact on other forms of discrimination.

402 U.S. at 22.

Perhaps no court activity in recent history has been so intensely bathed in the public spotlight as the series of school desegregation cases. For this reason, the preservation of judicial clarity and simplicity are uppermost objectives. The gravamen of the constitutional violation is de jure segregation; elimination of the dual school system going beyond mere token desegregation is the remedial requirement. These principles should be given full implementation within their proper confines, but school desegregation remedies should not be employed to effect, by indirection, social policies well beyond their legal scope.

2. The communities involved have desegregated to the full extent required by federal law. Further desegregation orders propelled by belief in the virtues of an "ideal" racial mix misconceive the doctrinal foundations of the controlling court decisions. Such orders furthermore deprive both races of the major educational benefits secured by community schools.

The presence in this case of "state action" of diffuse and dilute nature poses special difficulties or the school-remedy analytical framework. If it s conceded, as does the Court of Appeals, 462 F. d at 1066, that some scant evidence of state action r "state inaction") exists, the constitutional conequences are still far from clear. It has been

contended that state action, the principal purpose of which is something other than maintaining a dual school system, ought not to be accepted uncritically as a "substitute" for state action relevant to a Brown-type case. Another major issue raised by plaintiffs' arguments is whether discrimination of the inconclusive sort present here warrants the erasure of traditional state-created political boundaries for school operation purposes through a constitutionally commanded displacement of local autonomy. Further questions of profound importance, implicitly answered by the district court opinion, are whether desegregation, as currently implemented in Richmond, is insufficient to satisfy the mandate of Brown I, and whether equality in education, the animating principle of Brown, is truly served by consolidation. All these inquiries, which must grapple with the political tensions created by constitutional adjudication under Brown I, are inter-related and will be discussed together.

The district court regarded county and city lines as arbitrary demarcations deserving little respect before the imperatives of situations calling for desegregation remedies. State subdivisional lines are not sacrosanct, but it would seem they are due considerable respect as a legitimate exercise of power plenary to the state in the absence of any manipulation of the power forbidden by the constitution. That power has not been wielded in a forbidden manner in creating the boundaries under attack.

The constitutional legitimacy of the Virginia county lines may be highlighted by a comparison with the invidious usages of state power at issue in United States v. State of Texas, 321 F. Supp.

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1043 (E.D. Tex. 1970), modified, 447 F. 2d 441 (1971), and in United States v. Scotland Neck Board of Education, 407 U.S. 484 (1972). In the Texas case the state pleaded a legitimate exercise of state authority in the creation of independent school districts. The plaintiffs demanded, as in the instant case, consolidation of several districts to comply with Brown I. The court ordered consolidation. The facts, plainly distinguishable from those of the instant case, revealed that the state had carved out minute school districts that encompassed black neighborhoods or white neighborhoods, but not both. When population shifts occurred, the school boards allowed transfers across district lines to maintain color divisions among the schools. The pleas of innocence by the state authorities could not mask a careful scheme of district line-drawing to maximize segregation of school facilities.

In the Scotland Neck case, a single school district included a number of rural schools that had long been "Negro schools," and town schools that were predominantly white. In the face of an impending federal order for substantial racial blending of these schools, the Town of Scotland Neck, under a hasty authorization provided by the state legislature, declared itself an independent school district. The Supreme Court held the maneuver unconstitutional. Mr. Justice Burger, in a concurring opinion, took special note of the fact that the plan was not a racially neutral exercise of normal local prerogatives. Rather, the plan would perpetuate the existence of historically "Negro schools" and "white schools." 407 U.S. at 492. The severence of Scotland Neck from the county was not in the nature of a natural political development, but was "substantially motivated by

the desire to create a predominantly white system more acceptable to the white parents of Scotland Neck." 407 U.S. at 492.

The Texas and Scotland Neck cases present similarly disingenious use of the state district-creating power. Zones contrived to take advantage of the de facto "loophole" were artificially carved out to evade federal law under the fourteenth amendment.

In the Richmond situation, reliance on historical county subdivisions stands on a different footing from the cynical manipulations of state power in the cases above. The "stage" of local discriminatory conduct has been the individual school district. In no case has the Brown mandate been construed to require more than the dismantling of the dual school system within the particular discriminating district. Larger areas could be drawn into desegregation plans, but the individual district is the logical stopping point. If a larger geographical unit is selected, it is difficult to see what limits can ultimately contain the outward reach of a desegregation order.

Perhaps more importantly, meaningful desegregation can be undertaken in the vast majority of cases within the context of the individual school district. Such is the case in Richmond, where the plan presently in effect satisfies the requirements under "current law." 462 F. 2d at 1061. In the city system, black students compose 34-80% of the student body of the various elementary schools; 39-81% of the middle schools; and 43-79% of the high schools. The city schools are "racially identifiable" only in the sense that the county

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schools are, in comparison, appreciably more white. But have not the essential commands of Brown been complied with? Public schools in Vermont are, no doubt, more appreciably white than their Richmond city counterparts. Yet this comparison is no less relevant than a Henrico County comparison if Richmond has, indeed, taken effective action to eradicate the dual system. The Supreme Court desegregation decisions do not require scrutiny of neighboring counties to test whether greater racial homogeneity may be attained.

Certainly Swann, the most recent and intensive Court discussion of desegregation remedies, does not suggest that such far-flung attempts to level racial imbalance are required. In Swann a single school district was under examination, and the facts (over half of the system's black students attended schools at least 99% black under a token desegregation plan) called out for remedial action far more plainly than the instant facts. Nonetheless, the Court, in tackling the imbalance-as-violation issue, stated that "particular degrees of racial balance or mixing" are not required "as a matter of substantive constitutional right," 402 U.S. at 24, and that:

> The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

Id. Pursuant to this view, the Court noted that the existence of a school "all or predominantly of one race" would not, of itself, signal a discriminatory exercise of state authority. Rather, this might be attributable to the

> familiar phenomenon that in metropolitan areas minority groups are often found concentrated in one part of the city.

402 U.S. at 25.

The Court also adverted to the Congressional definition of desegregation in Title IV of the Civil Rights Act of 1964. 42 U.S.C. § 2000 (c) (b), which specifies that desegregation does not mean "the assignment of students to public schools in order to overcome racial imbalances." If racial balance clearly is not requisite to desegregation in a particular school district, then it must be concluded, a fortiori, that uniform racial balances of schools in adjoining districts is not dictated by the equal protection clause under current interpretation.

The cases on school desegregation from Brown onwards begin with the proposition that the "Negro school" is inherently unequal. This proposition could be substantiated by the stark historical facts before the Brown Court. Desegregation was calculated to eliminate the "Negro school" and busing plans, inter alia, were prescribed to supplant mere tokenism that would not significantly disturb the status quo. These principles are not challenged here.

However, the notion apparently spun off from Brown that the equal protection clause requires school boards to shift large numbers of black pupils to schools with white majorities (if the "metropolitan" area contains a white majority) stands on dubious constitutional footing and equally dubious educational footing. Inasmuch as judicial reliance on this notion imports substantial federal intrusion

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upon traditionally local activity and the casting aside of the neighborhood school concept, the validity of the notion ought to be closely questioned. It is suggested here that the shifting of racial groups in order to approximate the "ideal" balance of 67% white, 33% black in the Richmond area is likely to work more harm than good.

There is material in Brown at 347 U. S. 494 suggesting that segregation, especially segregation sanctioned by law, inflicts a "sense of inferiority" upon the Negro child. It would seem true beyond doubt that the experience of being compelled to attend an old, decrepit school while the white child attends a fine new school might demoralize the black child. But it is a mighty leap from this reasonable perception to conclude that attendance in a school predominantly black, as determined by neighborhood composition, infects the black student with a crippling sense of inferiority. It seems at least equally sound to conclude that foisting upon the black pupil an environment in which he is perpetually in the minority is both unreal (against the background of community experience) and generative of a sense of being "lost" in the white majority.

Perhaps such an immersion seemed desirable a decade or even five years ago, but the clear contemporary trend is toward pride in blackness and the black community. The dominant thought in the era following Brown was that the black might best shed his sense of inferiority through the creation of a society that would ignore his blackness. This does not seem to be what the black community desires today, and it would be dangerously misguided for a court to bottom its perception of equal protection imperatives on anachronistic analyses of the

racial problem. If it is true that both the black and white communities desire and would be best served by localized rather than metropolitan school systems, then the remedy contrived by the district court is indeed an errant and needlessly disruptive enterprise.

For the time being, the neighborhood school institution must receive secondary priority to implementation of desegregation orders, but it is the contention of the Amicus Curiae that further and unnecessary derogation of the neighborhood school is not the order of the day. The school, particularly the elementary school, ought to be a real and immediate factor in the lives of those whom it affects, not some remote, anonymous institution to which the children are "sent off" when they become of age. The strength that community involvements and control supply to the local school cannot be overstressed. This may be most true in poor, black urban neighborhoods, where, in contrast to white, middle-class attitudes, respect for and interest in the school system may be something that must be won through personal involvement and awakening community awareness.

These perspectives on the problem have been elaborated by recent commentators. In Note, "Urban School Decentralization: The Problem of the One and the Many," 5 Colum. J. L. & Soc. Prob. 137, 166 (1969), this view is related:

> It is argued that "differential instruction based on differentiated needs [in the communities within the City] is at the heart of both equality and quality," and that boundaries should be drawn with an awareness of the resulting racial composition of the districts so

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> that minority group children will receive the type of education in their community schools which will provide them with educational opportunities truly equal to those of white, middle class students.

It is added at 168:

> Above all, decentralization must foster a special attitude in community residents. The school must become not "them," but "us." Citing D. Hunter, The Slums: Challenge and Responsibility 117 (1964).

In Note, "Civil Rights--Judicial Consolidation of Public Schools to Achieve Racial Balance," 25 Vand. L. Rev. 893 (1972) the idea is also explored, partly as an attractive alternative to busing and the public clamor it has raised.

> One alternative which permits retention of neighborhood schools and offers relief for inner city schools, is the decentralization of school board control. Recently, many articles and commission studies have concluded that decentralization in large urban areas would upgrade equality of education for the urban students. This approach would place greater control of the neighborhood schools in the hands of the neighborhood itself, thereby placing the central metropolitan school board primarily in a supervisory capacity. The need for decentralization appears greatest in ghetto areas where residents have little if any influence over the institutions that regulate their lives. A neighborhood school board could provide

> greater flexibility to meet the exigencies of the individual school, serve a cathartic function by allowing the airing of local grievances, and grant ghetto residents control over at least one institution that helps shape the lives of their children.

25 Vand. L. Rev. at 908.

The district court desegregation plan for the three-community area is, of course, inimical to these evaluations of the merit of neighborhood schools for all racial groups. It also badly misreads contemporary notions of "equality" from the black man's viewpoint. Equality no longer means complete fusion with the white community. It does mean equal access, equal opportunity, and an end to law-supported discriminations. But it most potently means the ability to develop and strengthen the black community, rather than the right to dissolve it by clinical proportions into the white majority. It is thus highly questionable whether the district court's order, tied as tenuously as it is to constitutional principles and precedents, is likely to promote true equality--which must be the manifest objective of fourteenth amendment adjudication.

3. A desegregation order that reorganizes local units of government is violative of the basic constitutional principal of federalism. The failure of the order to recognize the reservation of powers to state government not only undermines such government abstractly but negatives local democracy and home rule.

In the United States local self-government has been a tradition since colonial times. Indeed, the

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democracy of many counties, towns, cities, villages and school districts ante-date the democracy of the several states and of the federal government. Many of the states of the union have adopted constitutional provisions allowing local units of government to reshape their own charters by the adoption of charter ordinances. New Orleans Waterworks Co. v. New Orleans, 164 U.S. 471 (1896); Walla Walla v. Walla Walla Water Co., 172 U.S. 1 (1898). The American tradition favoring local democracy is so strong that within the last two decades the majority of people in metropolitan areas have gravitated to suburban communities where their personal participation in local government is close, direct and meaningful. This pattern of government is precisely the pattern envisaged by the federal constitution in reserving non-delegated powers to the states and the people. Knapp v. Schweitzer, 357 U.S. 371 (1958); United States v. Butler, 297 U.S. 1 (1936). The goal of desegregation should not be used as a cloak to disguise a violation of local autonomy established by state authority.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be affirmed.

Respectfully submitted,

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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972

Nos. 72-549 and 72-550

SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, *et al.*,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, *et al.*,
Respondents.

CAROLYN BRADLEY, *et al.*,
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v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, *et al.*,
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On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF THE JEWISH RIGHTS COUNCIL AS *AMICUS CURIAE*

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On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF THE JEWISH RIGHTS COUNCIL AS *AMICUS CURIAE*

Interest of the *Amicus*

The Jewish Rights Council, *Amicus*, was founded in 1971 for the purpose of ensuring and promoting equality

of all persons before the law, and in that manner to strengthen and preserve the security and constitutional rights of Jews in America through the preservation of the equal rights of all Americans. The Jewish Rights Council believes that the welfare of Jews in the United States is inseparably related to and dependent upon the equality of treatment of all Americans, regardless of race, religion, creed, or ethnic background. The membership of the Jewish Rights Council includes over one hundred Rabbis from over thirteen States, representing Orthodox, Conservative and Reform Congregations. The leadership of the Jewish Rights Council includes Rabbis who marched with the late Reverend Martin Luther King in Selma, Alabama, for the equality of rights of all persons before the law.

The instant case raises an important issue under the Equal Protection Clause of the Fourteenth Amendment, involving the imposition by a Federal District Court upon a sovereign State and its School Boards of racial quotas of pupils in public schools through the drastic remedy of requiring the amalgamation of a city school system with two neighboring suburban county school systems into a single school system, together with a lottery plan for the cross-transportation of white students from the suburban school districts into the city schools and of black students from the city into the suburban schools.

Public education has been one of the keystones for the unprecedented success of the Jew and other minority groups in America, and therefore the Jewish Rights Council has a particular interest in quality, as well as equality,

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n public educational facilities. Being composed of mem-
ers of an historically persecuted minority, the membership
f the Jewish Rights Council is especially sensitive to any
nd all forms of discrimination based upon race, religion,
r ethnic background. On the other hand, the Jewish Rights
Council firmly believes that it is extremely important for
he preservation of our American way of life, with its con-
omitant "American dream," that the rights of one group
f persons shall not be sacrificed in the name of the promo-
ion of another minority group. Therefore, the interest of
micus herein is to oppose the use of the Equal Protection
lause of the Constitution to require racial quota systems
n the schools or in any other public function in this coun-
ry. For it is but a short step from the concept of a "viable
acial mix" (District Court below, 338 F. Supp. at 230) to
he infamous *numerus clausus.*

On the other hand, the Jewish Rights Council wishes to
nake it crystal clear that there must never be the slightest
etreat from the principle of *Brown* v. *Board of Education,*
47 U.S. 483 (1954), that a State or its agents may not deny
he equal access to a public school (or other facility) to any
erson on the basis of race, religion, ethnic background or
reed. In the words of the late Mr. Justice Frankfurter:

> "Color alone cannot bar a child from a public school."
> *Cooper* v. *Aaron,* 358 U.S. 1, 25 (1958) (concur. op.).

This is the promise of *Brown* from which there must be no
etreat anywhere in our Nation.

Consent to Filing

This *Amicus* Brief is being filed with the consent of all parties to the proceeding.

Opinions Below

The opinion of the District Court is reported at 338 F. Supp. 67; and the opinion of the Court of Appeals is reported at 462 F. 2d 1058. Both opinions are reported under the style of *Bradley* v. *School Board of Richmond, Virginia,* and will be referred to hereinafter as "*Bradley* below."

Statement of the Case

This litigation originally arose in 1961 when the original plaintiff black parents of public school children brought a class action to desegregate the public schools in the City of Richmond, then operating a dual system of admission to public schools. By the time of the beginning of the school year 1966-1967, however, and thereafter, freedom-of-choice plans were in operation in each of the school systems involved in the present case, namely, the City of Richmond, the County of Chesterfield and the County of Henrico. *Bradley* below, 338 F. Supp. 67, 70-71, 169, 173; 462 F 2d 1058, 1061.

In March of 1970, the plaintiff parents in the City of Richmond filed a Motion for Further Relief, being dissatisfied with the racial balance in the City schools under the freedom-of-choice plan. After a hearing in the District Court, an Interim plan was ordered for the 1970-1971 school year, involving the use of pupil transportation at

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the secondary level of schools only, due to the lack of sufficient transportation facilities to implement the "Foster plan" proffered by plaintiff parents. In approving the Interim plan, the District Court noted that the "Foster plan" would, if adopted, "create a unitary system" and "do much toward the thwarting of resegregation." *Bradley* v. *School Board of Richmond*, 317 F.Supp. 555, 576 (E.D. Va. 1970). In any event, it was the Interim plan which actually went into effect for the 1970-1971 school year in Richmond.

In December of 1970, the plaintiff school parents filed an amended complaint seeking to join the predominantly white school systems of both Chesterfield and Henrico Counties with the majority black school system of the City of Richmond into a tri-system-wide assignment of pupils, teachers, school plant, transportation facilities and all other incidents of school operation. Prior to a hearing on this tri-system-wide plan ("metropolitan plan"), a hearing was held in March of 1971 on the question of the 1971-1972 school year for the City of Richmond. As a result, the District Court ordered into effect the City of Richmond School Board's own plan 3, a modified Foster plan, for the 1971-1972 school year with the observation that either the Foster plan or the City's own plan 3 would "fulfill the School Board's legal duty. * * *" *Bradley* v. *School Board of Richmond*, 325 F.Supp. 828, 846 (E.D. Va. 1971).

As a result of the implementation of the Interim plan for the 1970-1971 school year in Richmond, approximately 3,000 out of a total of approximately 20,000 white pupils left the public schools in the City of Richmond, a 300% increase in normal white attrition. Again, after the im-

plementation of the City's own plan 3, an even greater attrition of white pupils was suffered by the City's public school system in 1971-1972. Consequently, the overall school population in the Richmond public school system became even more predominantly black than the extent of 63.8% which had held for the 1970-1971 school year. (*Bradley* below, 338 F.Supp. at 103, 185, 240-242.)

In view of the failures of the Interim plan as well as the City's own plan 3 to achieve a racial balance in the Richmond City public school system, and in view of the inability of achieving quotas of less than 40% black pupils in every Richmond City school (by reason of the white attrition), on January 5, 1972, after plan 3 had been in effect for a few months, the District Court ordered that the City of Richmond and the Counties of Chesterfield and Henrico implement a metropolitan consolidation plan in time for the 1972-1973 school year. That plan required the consolidation of the by then predominantly (over 65%) black schools of the City of Richmond with the stable predominantly (over 90%) white schools of said Counties, together with a cross-transportation lottery program of busing black pupils from City to Counties and white pupils from Counties to City; all in order that every school in the consolidated system would have no more than a quota of 40% black pupils, nor less than a quota of 15% black pupils, to avoid the pitfalls of resegregation due to white exodus ("white flight"), and black tokenism, respectively. 338 F. Supp. at 194-195, 197, 244-248.

The Court of Appeals for the Fourth Circuit reversed the order of the District Court by a five-to-one (5-to-1) vote, *en banc*, 462 F.2d 1058. On January 15, 1973, this Court granted certiorari.

Summary of Argument

State action in all of the school systems affected by the consolidation and racial cross-busing decree of the District Court below had achieved full compliance with *Brown I;* therefore, the District Court lacked power and abused its discretion in decreeing its drastic racial quota pupil assignment program, especially since quotas themselves do not comport with the principle of equality of opportunity guaranteed by the Constitution. Therefore, the Court of Appeals for the Fourth Circuit below was correct in reversing the judgment of the District Court below.

ARGUMENT

POINT I

Having implemented a unitary desegregation plan previously ordered by the District Court, the school system of the City of Richmond became unitary and there was no basis for the tri-system school consolidation and cross-busing decree of the District Court below.

The threshold question in this case is the operation *vel non* of a unitary school system by the School Board of the City of Richmond by the time the District Court decreed its drastic remedy of tri-system school consolidation of the City schools with those of two neighboring Counties, together with cross-busing of pupils between City and Counties. There is, however, simply no allegation in the amended complaint (filed on December 14, 1970), nor any evidence, that any State action, subsequent to the 1970 District Court decision (317 F.Supp. 555), occurred to segregate any of the

schools in any of the defendant public school syste
cording to race. Thus, unless the concept of "u
status" is to be given the unprecedental meaning of a
majority pupil quota, or any other preconceived b
ratio of white pupils to black pupils in our public s
there is no basis for the drastic decree of the District
below, 338 F.Supp. at 244-248, particularly where t
fendant Richmond City School Board had already
mented a previously ordered desegregation plan.

As the Court of Appeals pointed out in this case

> "Indeed, it is virtually conceded and estal
> beyond question that, albeit belatedly, Richmond
> this juncture done all it can do to disestablish
> maximum extent possible the formerly state-i
> dual school system within its municipal boun
> *Bradley* below, 462 F. 2d at 1061.

Thus, the springboard for the tri-system-wide con
tion plan, *i.e.*, the supposed lack of unitary status
Richmond City school system, was totally absent fr
case. This Court has made it clear that, despite u
demography, at some point a previously dual school
"should have achieved full compliance with this
decision in *Brown I*" and that then the system
"unitary." *Swann* v. *Charlotte-Mecklenburg Bo*
Education, 402 U.S. 1, 31 (1971). Therefore, only
Court should find that "unitary" status had not b
tained in the Richmond public school system can the
of the District Court below be reinstated. For, o
affirmative duty to desegregate a school system ha
accomplished and racial discrimination *"through
action"* is eliminated from the system, then in the
of a showing that "either the *school authorities* o

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other *agency of the State* has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, *further intervention by a district court should not be necessary.*" *Swann, supra,* 402 U.S. at 31-32; emphasis added. Thus, once a school system achieves unitary status, it gets a fresh start, and judicial power to intervene is exhausted in the absence of further State action to resegregate the schools.

It appears, however, that *private* action in the City of Richmond, of the same pattern as in virtually every other city in America, did indeed contribute to the inability of the Richmond City school system to obtain a white majority pupil quota in every school in that system. Obviously, the white parents either removed their residence away from the City or exercised their constitutionally protected right to transfer their white children from the public to the private schools. *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925); *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972). Such private action can and undoubtedly does occur even where there is no previous history of a dual school system. See: William K. Stevens, "How a School Tips From White to Black", *N.Y. Times,* November 6, 1972, p. 1, col. 1, quoting Dr. Thomas Pettigrew as stating (*id.* at p. 83, col. 5): "Tipping points are in people's heads, * * * One community's tipping point may be another community's stability, depending on the circumstances." And even if white parents flee the public school system, their attitudes, beliefs, and behavior are beyond any Federal judicial remedy under present law. *Moose Lodge No. 107* v. *Irvis,* 407 U.S. 163 (1972); *Pierce* v. *Society of Sisters, supra; Wisconsin* v. *Yoder, supra.*

Careful and "nice distinctions"* must therefore be drawn between racial imbalance in public schools resulting from private white attrition from a school system, whose boundary has been set by racially neutral State action, as opposed to racial segregation caused by discriminatory State action. This Court itself has already set forth such distinctions in racial integration cases, for the promises of *Brown I* (347 U.S. 483) and *Brown II* (349 U.S. 294) extend only to those areas of State action under "law(s) requiring or permitting" segregation or discrimination according to race. *Brown I*, 347 U.S. at 488, 496; *Brown II*, 349 U.S. at 298.

While it is true that racially imbalanced housing contributes to the existence of racially imbalanced schools under a neighborhood school system, nevertheless, such racial imbalance in housing patterns occurs in virtually every city in this Nation. Dr. Karl Taeuber, "Residential Segregation", *Scientific American*, August 1965, p. 12; cited approvingly in the dissenting opinion in *Northcross* v. *Board of Education of Memphis*, 466 F.2d 890 at 897 (6 Cir. 1972; cert. den., 41 L.W. 3447). Moreover, this housing imbalance occurs through private action both black** and white regardless of local employment practices or civil rights policies. *Ibid.* And *Brown I* and *Brown II* did not purport to touch such social issues at all, for school desegregation cases "can carry only a limited amount of

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* *McLeod* v. *Dilworth Co.*, 322 U.S. 327, 329 (1944).

** The fact that some blacks prefer to live in black neighborhoods, and that some blacks disapprove of the District Court's integration decree in this case as "paternalistic and patronizing" (462 F. 2d at 1063, fn.4), casts some doubt on the accuracy of the demographic analysis that blacks are "locked into urban school divisions" (Brief for Petitioners in No. 72-550) and raises the question as to the actual constituency of the class of black plaintiffs.

baggage." *Bradley* below, 462 F. 2d at 1066. The appropriate remedy for housing discrimination* lies outside the scope of a school case, in any event.

Thus, it appears that the same social dynamics, which are operative regardless of State action, were operative in the case at bar to defeat the ability of the Richmond City school system to achieve a white majority pupil quota in every school in that City. Yet the District Court below ordered the drastic and sweeping tri-system consolidation remedy in the absence of any evidence that State action was responsible for the inability of the City school system to achieve the white majority quota. Moreover, the tri-system-wide metropolitan consolidation plan together with the "lottery program" (338 F.Supp. at 187) of cross-busing solely of black pupils from City to Counties and solely of white pupils from Counties to City, all as decreed by the District Court below, hardly comports with the remedy of "a revision of school districts and attendance areas into *compact* units to achieve a system of determining admission to the public schools on a *nonracial* basis. *Brown II*, 349 U.S. at 300-301; emphasis added.

Due to a white exodus from the central City of Richmond, the type of phenomenon occurring all over the Nation, all previously ordered desegregation plans had failed to satisfy the District Court below in its quest for a white majority quota in every school. But surely the remedies flowing from the Equal Protection clause of section 1 of the Fourteenth Amendment do not extend to a case, even with a previous history of de jure segregation, where, as

* See: *Jones* v. *Albert H. Mayer & Co.*, 392 U.S. 409 (1968).

here, it has not been shown that "any person" is now being denied admission to any public school "solely on the basis of race." U.S. Const. Amend. XIV, sec. 1; *Brown I*, 347 U.S. at 493. For the Equal Protection clause creates individual rights, and not group quota rights, whether in employment opportunities, in any jury selection, or in education. *Hughes* v. *Superior Court of California*, 339 U.S. 460 (1950); *Carter* v. *Jury Commission*, 396 U.S. 320, 339 (1970); *Mapp* v. *Board of Education*, 41 L.W. 2207 (6 Cir. October 11, 1972). See also: *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 24 (1971).

POINT II

The District Court lacked power to order the consolidation of the unitary school system of the City of Richmond with the unitary school systems of the neighboring counties to achieve a racial balance of pupils in all schools of all systems.

The slippery sociological concept of "racially identifiable schools"* (*Bradley* below, 338 F.Supp. at 79-80), the only purported evil in the case at bar, hardly constitutes a proper cause for the drastic remedy decreed by the District Court avowedly to secure a "viable racial mix" (338 F. Supp. at 186, fn. 22; 230) "plus positive interaction" (338 F.Supp. at 194) in all the public schools in the defendant school systems. For it has been well stated that:

> "The Constitution is intended to preserve practical and substantial rights, not to maintain theories."

* In a dual school system, however, this phrase may have a well-defined meaning as imparted by deliberate State action. See: *Green* v. *County School Bd.*, 391 U.S. 430, 442 (1968).

Faitoute Iron & Steel Co. v. *Asbury Park,* 316 U.S. 502 at 514 (1942)

l that:

"The Constitution is concerned with practical, substantial rights, not with those that are unclear and gain hold by subtle and involved reasoning." *Federal Housing Administration* v. *The Darlington,* 358 U.S. 84 at 91 (1958).

While it is true that the Congress has enacted such tutes as the Civil Rights Act of 1871 (42 U.S.C. 1983) l the Civil Rights Act of 1964 (42 U.S.C. 2000), the uity power of the federal judiciary is subject to the itation that its equity jurisdiction "depends upon legal igations, and its decrees, can only enforce remedies to extent and in the mode by law established." *Rees* v. *y of Watertown,* 86 U.S. (19 Wall.) 107, 121 (1874). t since there appears to be no legal basis for the legal igation of defendant public school systems, now unitary, operate racially non-identifiable schools (whatever that y mean from time to time), there simply is no constitunal violation to which any equitable remedy can attach.

Again it should be stressed that this case does not come hin *Brown.* "Never in that decision did it mandate or n hint at a concept in which the integration or lack of n any educational system should be judged by whether school population in each school was a percentage mirof the population in the general school area." "Secary Schools 1971-1972—Movement of Students to ieve Integration" in *Third Report of the Temporary mmission to Study the Causes of Campus Unrest*

("Academy or Battleground"), Albany, N.Y. (1972), Part I, Section II, p. 23 at p. 44.

Moreover, Congress has set forth a national policy in enacting 42 U.S.C. 2000c-6(a)(2) directly opposed to racial balancing in public schools by means of forced transportation of pupils, and this policy applies to every "de facto segregation" case. *Swann* v. *Charlotte-Mecklenburg*, 402 U.S. 1, 17-18 (1971). Thus, the equitable remedies available to a federal district court, under the remedial section of the Civil Rights Act, 42 U.S.C. 1988, are correspondingly limited.

It should be noted, moreover, that section 5 of the Fourteenth Amendment enlarges only the enforcement power of the Congress, not the federal judiciary; and that "As broad as the congressional enforcement power is, it is not unlimited." *Oregon* v. *Mitchell*, 400 U.S. 112, 128 (1970). Hence, there cannot possibly be any right of the plaintiff black school parents under the Constitution to have their children attend public schools having a "viable racial mix", "plus positive interaction" (whatever these may mean). 338 F.Supp. at 230, 194. And in the absence of such a constitutional right, there can be no violation of such right, and hence no occasion for the exercise of the equitable remedial powers of a district court. See: *Swann*, 402 U.S. at 15; see also: *Bulluck* v. *Washington*, 468 F. 2d 1096, 1105 (D.C. Cir., 1972).

POINT III

The Constitution guarantees equality of opportunity, and not equality of results.

There is no room in a unitary school system for judicial legislation of public school boundaries and for pupil quota assignments based upon race, all pursuant to a theory of "viable racial mix." Many years ago, this Court had occasion to pass on the evils of another racial quota scheme, that time in the area of employment opportunity. This Court then held that the States were free to ban all picketing designed to secure racial quota hiring practices. *Hughes v. Superior Court of California*, 339 U.S. 460 (1950). As Mr. Justice Frankfurter cogently reasoned in that case:

> "To deny to California the right to ban picketing in the circumstances of this case would mean that there could be no prohibition of the pressure of picketing to secure proportional employment on ancestral grounds of Hungarians in Cleveland, of Poles in Buffalo, of Germans in Milwaukee, of Portuguese in New Bedford, of Mexicans in San Antonio, of the numerous minority groups in New York, and so on through the whole gamut of racial and religious concentrations in various cities. States may well believe that such constitutional sheltering would inevitably encourage use of picketing to compel employment on the basis of racial discrimination. In disallowing such picketing States may act under the belief that otherwise community tensions and conflicts would be exacerbated. The differences in cultural traditions instead of adding flavor and variety to our common citizenry might well be hardened into hostilities by leave of law." *Hughes*, 339 U.S. at 464.

It is easy to see that racial quotas mandated by law in our heterogeneous society cannot but quickly escalate into ethnic jealousies and conflicts. It is not difficult to foresee even political campaigns based upon the issue of racial quotas dignified by the District Court below. The very fabric of our society cannot tolerate the mischief inherent in any ethnic quotas, particularly those dignified by law. The only viable solution to the racial problems of our times was formulated long ago by Mr. Justice Harlan (senior), dissenting in *Plessy* v. *Ferguson*, 163 U.S. 537 (1896):

> "In respect of civil rights, common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights." *Plessy*, 163 U.S. 537, 554.

There must never be an abandonment of the constitutional principle of equality of opportunity, but without the interposition of quotas to secure equality of results. The District Court acted far in excess of its power and discretion in elevating the theory of "viable racial mix" or "optimum mix" (338 F.Supp. at 230, 194-195) into a constitutional right of plaintiff school children. For once a public school system is unitary, the governing constitutional principles must all be "color-blind." *Plessy* v. *Ferguson*, 163 U.S. at 559, dissenting opinion of Mr. Justice Harlan.

Conclusion

There being a complete lack of any showing that any person was being denied equal protection of the laws, the alleged constitutional violations found by the District Court below being based upon a pure theory of ethnic quota systems, and the drastic remedy of tri-system school district consolidation with racial cross-transportation of pupils being an abuse of equitable power and discretion; accordingly, the judgment of the Court of Appeals below should be affirmed and the amended complaint should be dismissed.

Respectfully submitted,

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In The

Supreme Court of the United States

October Term, 1972

No. 72-549

THE SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF AMICUS CURIAE FOR THE CONGRESS OF RACIAL EQUALITY

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BRIEF AMICUS CURIAE FOR THE CONGRESS OF RACIAL EQUALITY

I.

CONSENT TO FILING

Consent to the Applicant's filing of a brief *amicus* has been obtained from all parties to this proceeding.[1]

[1] Applicant also sought permission from the parties in *Carolyn Bradley* v. *The State Board of Education*, No. 72-550. Counsel for Carolyn Bradley have not given permission in that case.

II.

INTEREST OF THE AMICUS

This brief is submitted by the Congress of Racial Equality (hereinafter re[illegible]red to as CORE), which is a national organization working for the eradication of every vestige of racial discrimination in American life. It was originally founded for this purpose thirty years ago, when a group of fellow Americans sought to apply Ghandian principles to the American racial situation.

The first action of this dedicated band of idealists took the form of a sit-in at a lunch counter in Chicago. The success of this action encouraged similar action in other areas, and CORE was soon on its way to becoming the major civil rights organization that it is today.

During its early period, CORE's direct action techniques were based on the concept that moral suasion alone could achieve the desired goal of the organization. The sit-in and the picket line thus became its hallmark, and its members became known for their courage, their tough idealism, and their willingness to undertake any project in the interest of justice no matter what risks might result to their persons.

In Richmond, part of the educational system affected by the present proceedings, CORE became involved at the request of many Black parents who are distressed by the failure of the schools their children attend to provide adequate education. Even if the District Court's order does not work disastrous consequences to Black children by their being uprooted and placed in schools where estrangement may be their only find, as countless Black parents expect, the District Court's decree offers little promise for the educational advantages they seek.

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CORE's National Council has spent a substantial amount of time in studying available documents in the instant case, including petitions for writs of certiorari by the Richmond School Board and Carolyn Bradley, et al., and their respective briefs on the appeal before the United States Court of Appeals for the Fourth Circuit. CORE further believes, on the basis of this examination, that questions of law relevant to and important for resolving the issues herein will not be adequately covered in either the respondents' or petitioners' briefs.

It is the position of *amicus* that neither the Fourteenth Amendment nor the desegregation cases foreclose judicial cognizance of the remedial alternative to racial mix-via-busing herein proposed.

A reassessment of its programs in the mid-1960's indicated to the organization that it had been consistently and decidedly rebuffed in its assaults on discrimination in housing and education. It became apparent that new strategies would have to be devised to deal with the entrenched nature of discrimination and racism in those areas affected.

Aside from its obvious importance in the quest for equality, education was seen as the area to which new strategies could most feasibly and profitably be applied. The organization has therefore concentrated a major portion of its resources in the field of education over the past number of years. Its concern and its programs in this area as well as its long support for *Brown* v. *Board of Education*, 347 U.S. 483 (1954), are a matter of public record. CORE has fully supported the mandate of *Brown*, as evidenced by its involvement in various court cases. Its deep involvement in *Carter* v. *West Feliciana Parish Board of Education*, 396 U.S. 290 (1970), for example, is an indication of how persistent its involvement in education has been. CORE has

never been dogmatic about the *means* of obtaining its goal of equality for all Americans.

CORE members are agreed that the interest of the aggrieved individuals, who were the victims of years of segregation should not be ignored when changes are effected, and that such individuals should not be foreclosed from proposing future remedies designed to provide equality in such unitary school districts as may result in part or all racially identifiable schools within a given district.

CORE respectfully submits that, where a school system is restructured by a local board of education in a manner, as approved by the court, so as to comply with the mandate of *Brown,* any subsequent effort at consolidation of unitary school systems, merely for the purpose of achieving a so-called "viable racial mix," results in irreparable injury to Blacks. Any plan, which effectively destroys the opportunity for Blacks to have a hand in controlling their schools, results in a total loss of their culture and traditions which they seek to maintain.

We ask this Court to take judicial notice of similar problems, of denial of due process, which would result by a reversal of the Court of Appeals' decision herein. Any view which suggests that an education system cannot work if it is composed of a majority of Blacks should not become the standard established by this Court. It is for this reason, therefore, that we file this brief *amicus.*

III.

SUMMARY OF ARGUMENT

1. Having adopted unitary school systems in the three systems in question, which effected the disestablishment of dual schools in these jurisdictions, both the letter and spirit

of each board's actions in the three systems in question indicate full compliance with *Brown I*. In the absence of invidious state action, or other constitutional violation, the District Court lacked authority to order the consolidation of the Richmond, Henrico and Chesterfield school systems.

2. Theoretical testimony which suggests that no educational system will work if it is "majority black" is strongly racist and should be ignored by a federal court, especially when such testimony is sought to be used as a basis for disenfranchising Black residents, since Blacks would be permanently prevented from achieving control of a school system in which they are the majority and, as a result, denied due process as guaranteed by the Constitution.

IV.

ARGUMENT

The Constitution does not permit a federal court to order the consolidation of unitary school districts merely for the purpose of establishing a so-called "viable racial mix", in the absence of a clear showing that systematic or invidious discrimination permeates a system as a whole and thereby affects its operation.

A.

The Richmond School System Is Not Characterized By Racial Exclusively Or White Power Monopoly.

This brief strongly supports the judicial holding that there must be a unitary school system within every school district, *Alexander* v. *Holmes County Board*, 396 U.S. 19 (1969). We respectfully suggest that it would aid the resolution of the problem confronting the Court in *Brown* and still confronting it today to define the "unitary and dual systems"

in the context of the true nature of the public educational establishment.

A dual school system may be defined as the case where, overtly or covertly, in one state school district one board of education maintains control of two school systems with racial exclusivity. The Court has correctly declared that a unitary system is the antithesis of a dual school system.

In this case, we agree with the conclusion of Dr. Clifford P. Hooker, who testified as follows:

> "The witness: A public school is desegregated, in my opinion, when it excludes no one because of race, religion or national heritage.
>
> "The Court: . . . I take it your position is that Richmond doesn't need any desegregation, is that correct under your definition of it?
>
> "The witness: Under my definition the Richmond schools are presently desegregated.
>
> "The Court: All right." (A. 1194a, 1195a.)

The dual (segregated) system must be viewed not simply in terms of spatial relationships, but primarily in light of existing socio-econo-political dynamics.

The problem is not *simply* that Blacks and Whites attend different schools. A look at dual (segregated) school systems, whether *de jure* or *de facto*, will show that they generally have, aside from attendance of White and Black pupils at different schools, three common characteristics which make segregation the obnoxious and unconstitutional system that it is.

The first of these is that Whites set Blacks apart, by law or in fact, without their choice or consent. This constitutes the arbitrary imposition of authority from without. The act of

Whites telling Blacks what schools they can or cannot attend stigmatizes Blacks and imposes intolerable restraints on their constitutional rights. Measured by this factor, Richmond is not a dual school system.

Secondly, the local school board, usually all White or predominantly White, exercises control over both White and Black schools and favors the White schools. The school board enjoys a more intimate relationship with the White community and White parents than it does with the Black community and Black parents. It is more sensitive to their problems, their needs and aspirations than it is to those of Blacks. This deprives Black educators and pupils of much-needed support from the policy makers and managers of the schools and literally guarantees the failure of the Black school to achieve excellence in education.

A positive relationship between parents and those who govern the school is one of the most important factors affecting the quality of schools. Under segregation, Black parents have not enjoyed that kind of relationship. Richmond now has three Black members on its local Board of Education, one of whom is Chairman, and four Whites. CORE hopes and expects that the situation will further improve. By a consolidation, however, the voice and authority of the black members will be substantially diluted.

Finally, in a segregated system the local school board consistently deprives Black schools of resources. The money allotted by law to each and every school district when received by the local board is directed as the local board sees fit. Traditionally, part of the money intended for Black schools has been directed by the local board to White schools. Under this standard, Richmond is a unitary system. Nearly all Richmond schools have a Black majority,

ergo, no discrimination exists against Blacks in the expenditure of money for education.

Thus, it is the local school board, the dispenser *and* regulator of money, rewards, good will, and other benefits—"tangible" and "intangible"—which makes Black schools inferior. Under segregation, Blacks have been locked into a system over which they exercise no control, for which they have no responsibility and with respect to which they are powerless to effect meaningful change. In Richmond, Blacks are now gaining a position in which they are able to exercise control and responsibility. CORE hopes that the situation will further improve. However, in a consolidated school division in which each school has a majority White student body Blacks' opportunity for control and responsibility will be greatly minimized if not totally lost.

When segregation is placed in its proper context and defined in terms of who manages and controls the schools, it becomes apparent that the chief characteristic of a segregated school system—the imposition of oppressive outside authority—makes *de facto* dual systems in one district no less unconstitutional than formerly *de jure* dual systems in that district.

In light of this construction, how should different "communities of educational interest" satisfy their legitimate educational needs? Should that process be subject to equal protection? Does not this construction bear implications as to what constitutes a non-discriminatory, non-exclusionary unitary school system? Does this not suggest the need for internal restructuring, not of the "branches"—the Black schools, but of the "root"—the districts and the school boards, which represent the needs of the majority "community of educational interest."

CORE feels that it is patently clear that the surest measure of how much Blacks can trust any school system to give their children an education equal to that of Whites is how much actual—not illusory—opportunity to effect change and elicit responsiveness from that system exists. Does this not suggest that whatever is proposed to replace segregation must be measured also in terms of how much control is held by the Black community itself. This is a necessary guide to determining the potential success of any proposed means of desegregation.

To summarize, two critical elements of the dual or segregated system *de facto* or *de jure* are: (1) racial exclusivity and (2) white power monopoly. The proposed consolidation of the Richmond schools would enhance both racial exclusivity and white power monopoly. In light of this, does the District Court's order in the instant case offer effective relief against these two critical elements of segregation? The answer is, indeed, negative.

The District Court's Order fails to recognize the following requirements, if Blacks are to be offered equal protection under the Fourteenth Amendment:

1. The fact that Blacks are a valid special-interest group with needs that are unique.

2. The fact that wherever there exists a sizeable Black community, Blacks constitute a "community of educational interest."

3. The fact that Black communities are increasingly and ever more clearly demanding the opportunity to fulfill their educational interest and not have them always subordinated to the White "community of educational interest."

4. The fact that equal education implies more than just sharing equal physical space with Whites in the same classroom, with the same teacher, or sharing the same principal. Equal education further implies opportunity equal to Whites to structure curriculum, equal access to all available resoures, and equal access to and equal representation among school policy makers and managers.

5. The fact that an integrated setting can be as potentially damaging psychologically as a segregated setting is amply supported by a growing body of scientific data.

In Christopher Jenck's *Inequality: A Reassessment of the Effect of Family and Schooling in America*, (New York: Basic Books, Inc., Publishers), 1972, pp. 40-41, the author states:

> "In a community where the school administration believes in desegregated schooling and encourages black parents to attend desegregated schools, such a system could produce dramatic changes in *attendance* patterns. The 'liberal' alternative, which is widely viewed as the road to racial equality, seems to be compulsory busing of blacks to white neighborhoods and vice versa. This implies that black parents cannot send their children to all-black schools, even if they want to, because all-black schools are *by definition* inferior. This position strikes us as both *racist and politically unworkable over the long haul.*" (Emphasis added.)

The so-called "viable racial mix" concept, the objective of which is effected through the joinder proposed by the school board of the City of Richmond, is reflective of the notion that Black schools are by definition inferior.

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B.

Racial Mix Should Not Be Held To Be the Sole Means Of Fulfilling the Constitutional Requirement.

ARGUMENTS MADE IN SUPPORT OF A CONSTITUTIONAL REQUIREMENT OF RACIAL MIX IN THE SCHOOLS ARE FALLACIOUS.

Distinction between what is required by the Constitution d desirable as a matter of policy must be maintained. hat is unconstitutional is not the clustering together of ople, whether voluntarily or as a result of the workings of personal social factors, but the forced separation of people the state along racial, or even ethnic or religious, lines or idious discrimination imposed upon people by the state the basis of differences in their social, economic, and litical conditions.

Another contention that is made in support of the propo-on that the Constitution requires racial dispersal begins th the remark by this Court in *Brown* that racial segrega-n in the schools results in inherently unequal educational portunities. This statement, it is said, has been subse-ently substantiated by the Coleman Report, which shows inequality in educational opportunities whenever there is ced racial separation in the schools, whether the separa-n is imposed by law as segregation or not.

But the remark of the Court in *Brown* must be understood context. The Court found legally segregated education to inherently unequal, because it imposed a stigma and be-use, in dual school systems which result from it, the Black rt of the system was, overtly or covertly, but always sys-natically, short-changed. As for the Coleman Report, data show a measurable, if not a very substantial, im-vement in the education of Black children in "integrated" opposed to forced racially separated (segregated) situa-

tions. But whether what was measured was a difference between the education of Black children in one and the other situation, or a difference between the learning capacity of middle-class as opposed to lower-class Black children in a particular kind of learning experience is uncertain.

The Coleman Report hints at an important observation that change in a school ("community of educational interest") caused by a shift in the student population of more than 30 percent results in a decrease in the general educational performance of the students in that school. One can assume that "community of educational interest" can absorb a limited amount of change before it becomes unstable. Also, that stability of an "educational community of interest" is a factor in educational achievement. If a new look at Coleman's data and additional research can support this theory, then: what are the implications for movement toward racial mix as opposed to movement toward community control of schools—both non-discriminatory, non-racially exclusive—when and where there exists a choice? Is there a link between the failure of Black schools under segregation and the fact that the Black community doesn't control their schools? Shouldn't social scientists explore further Coleman's suggestion that pupils learn in proportion to their feeling of security and control over their environment?

(2) Any Argument That Racial Mix Is A Constitutional Requirement Suggests The Legitimation Of The Inferior Status Of Blacks.

In 1954, the Court in *Brown* held that segregation of schools when mandated by law created conditions which made the education obtained by Black children "inherently" unequal. The correctness of that ruling is not at issue. Clearly, the stigma which attaches when invidious manda-

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tory discrimination is imposed is one which creates scars which are impossible to remove. It is one thing, however, to proscribe legal segregation and its effects, and another to require racial mix as a constitutional command.

To argue that a school in which the vast majority of children are Black—where this condition did not arise by invidious operation of law—is by its very nature inferior, is to validate the very condition which *Brown* sought to remove. Such an approach suggests that only when Blacks are in the presence of Whites can they be truly equal. This approach—at the very least—implies that Black children cannot prosper educationally even if all other conditions are truly on a par with those prevailing in White schools. Of course, to be truly on par, each group would have to control its educational environment.

Voluntary separation and separation arising out of the operation of market forces are not the same thing as enforced separation. There is no evidence to the effect that an inferior education must by necessity result from the former one.

(3) Establishment Of A Constitutional Requirement Of Racial Mix In The Public Schools Would Foreclose Other Developments In The Evolution Of Public School Education Which Might Prove Desirable From An Educational Point Of View As Well As For Other Reasons.

Though the word is overused, it is fair to say that the public schools in the United States are in crisis. At any rate, they are, like so much else, in ferment, and ready for many changes and reforms.

Over the past few decades in many parts of the country, there has been structurally a movement toward consolidation, toward enlargement and centralization of school sys-

tems, rendering them less and less subject to the control of, and more and more removed from, the community and the family. But a counter trend is now also in being, toward control of schools in relatively much smaller districts by cohesive, concerned communities. Such communities should be self-defining, strictly on a voluntary basis, so that any family not wishing to form part of the community must be free to transfer its children out to other schools without having to move physically, and of course they may not be coercively formed by the state along racial, or ethnic, or even socio-economic lines.

When these communities exist, they must rest on the principle of voluntarism. But a trend toward community control of schools under the conditions mentioned is clearly visible, and in the judgment of many qualified observers may have highly beneficial educational results, as well as broader desirable consequences by contributing to other self-reliant and constructive community activities. (One aspect of this trend to community control is represented by the voucher plan which the Office of Economic Development has launched on an experimental basis.) Clearly, the consolidation plan in question here is a movement toward centralization and enlargement and away from community control.

Establishment of a constitutional requirement of racial mix would foreclose any further development of the community-control idea, and of many other possibly desirable options in the reorganization and reform of public school education. To begin with, the effort to abide by the requirement of racial mix on a nationwide basis would surely absorb all possible resources—material, political and of all other descriptions—available to the public schools, for it would be an effort of unprecedented proportions. Secondly,

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racial mix could only be accomplished through more and more consolidation of school systems and centralization of control over them. Inevitably it would constitute a choice of one option to the exclusion of other ones.

We do not remotely know enough about how best to solve the problem of our schools to do that—to put the force of the Constitution behind one objective, one technique, to the exclusion of other ones. This Court should decline to impose a requirement of racial mix, unless in a particular situation there is no other means of satisfying the constitutional end of equality.

We are confronted here with a many-faceted problem to which one definitive solution has not been found. The Court has in the past been sympathetic to the desire of local areas to develop new approaches to difficult problems. We hope the Court will extend that sympathy to the desire of local Black communities to develop their own means of achieving the constitutionally mandated ends. The proposed Richmond school consolidation would interfere with that achievement.

V.

CONCLUSION

We respectfully submit that the findings indicate that:

1. When racial mix is the only means, or most "effective" means, to bring about at "the earliest practicable date" the Court-ordered end, a unitary system in a district, then it is mandated, but this is not necessary in Richmond.

2. In any event, the Constitution does not mandate that unitary school districts be consolidated to accommodate

the so-called viable racial mix concept as suggested by Petitioner in this case.

We pray that this Court affirm the judgment of the Court of Appeals and remand this case to the lower court to permit other aggrieved citizens of Richmond to petition for that plan that can best meet the test of "good faith compliance," "effectiveness" and "earliest practicable date" (*Brown II*) in their quest for their constitutional rights in the City of Richmond.

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In The

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Nos. 72-549 and 72-550

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BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinions in the Court of Appeals for the Fourth ircuit are reported at 462 F.2d 1058 and are printed in e Appendix to Petition for Writ of Certiorari filed by e School Board of the City of Richmond, et al., in No.

72-549 at pp. 557a-602a.* The opinion of the District Court for the Eastern District of Virginia is reported at 338 F.Supp. 67 and is printed in the same appendix at pp. 164a-545a.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The petitions were timely filed pursuant to ex parte orders extending the time for filing entered by Mr. Justice Douglas and Mr. Justice Marshall. Certiorari was granted on 15 January 1973.

QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Fourth Circuit erred in holding that the District Court could not compel the joinder of three separate school systems—each already operating a unitary school system, the boundaries of which, under state law, are co-terminous with long-standing city and county lines—where the sole purpose and effect of the proposed joinder was to assure a white majority in each city school of not less than 60% and not more than 80%?

2. Whether the Constitution or any decisions of this Court require that a unitary city-wide school system be judicially reconstructed by adding to it two unitary county-

* Citations in this brief in the form "A. ....." refer to the Joint Appendix filed by Petitioners in Nos. 72-549 and 72-550. Trial exhibits are designated "PX" for plantiffs', "RX" for the Richmond School Board's, "CX" for exhibits of the Chesterfield School Board or Board of Supervisors, "HX" for exhibits of the Henrico School Board or Board of Supervisors, and "SX" for exhibits of the State Board of Education and State Superintendent of Public Instruction. In addition, citations to exhibits reprinted as part of the Appendix in a separate volume are given in the form "Ex. A. .....". Citations in the form "Pet. A. ....." refer to the separate Appendix of Opinions Below and relevant state statutes filed with the Petition in No. 72-549.

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wide school systems in order to assure a white majority in each city school?

3. Whether the Constitution or any decisions of this Court require the obliteration of centuries-old boundary lines between the Counties of Henrico and Chesterfield and the City of Richmond solely to assure white-majority schools in the City of Richmond, when these lines are not, were not, and never have been manipulated to inhibit desegregation or to promote segregation?

CONSTITUTIONAL AND STATUTORY PROVISIONS

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const., Amend. XIV, § 1.)

* * *

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. (U.S. Const., Amend. X.)

STATEMENT

A. General Background

The City of Richmond, the County of Henrico, and the County of Chesterfield are local government units within the Commonwealth of Virginia.[1] They have a history dating

[1] "In Virginia, cities and counties are mutually exclusive. The area embraced within a city's limits is not a part of a county. Cities expand

back two and one quarter centuries. Henrico County was created in 1634; the City of Richmond in 1742; Chesterfield County in 1749. In the interim, the City of Richmond has enlarged its territory by annexation on eleven different occasions, most recently in 1970. These annexations were the only governmental actions affecting the racial composition of the school systems. Their effect has been to increase the percentage of the white population within the City of Richmond.

These three political subdivisions are charged with the general functions of local government within their geographic boundaries. Plaintiffs concede that the establishment of the boundaries of the City and the Counties was not racially motivated. Each governing body is elected by popular vote and exercises the power to tax to provide revenues for all governmental functions, including the function of public education which has been a local government function for over one hundred years. The school systems that are the concern of this case are administered by school boards, appointed in one county by the Board of Supervisors, in the other by a court appointed School Trustee Electoral Board and in the city by the City Council. The fiscal powers of taxation and borrowing are vested in the elected governing body of each political subdivision and not in the school boards.[2] In addition, in the Counties, bond

---

at the expense of the territory of an adjacent county, and Virginia has provided a judicial procedure as the means for extending the limits of cities." *Holt* v. *City of Richmond*, 459 F.2d 1093, 1094 (4th Cir. 1972).

[2] "Virginia's school divisions differ from those of most other states in their fiscal dependence; that is, the lack of independent authority to tap local sources of revenue for school purposes. Their annual budgets and authorizations for issuance of bonds for capital outlay must receive the approval of local boards of supervisors." 1 Virginia Educational Needs Assessment Study 336 (1970). (RX 69; Ex. A. 19e-20e)

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issues for school construction must be approved by the people in referendum.

This case derives from an attempt to dismantle these three unitary school systems, to separate each from its local government, and to create one new and distinct school system which would be financially dependent upon three separate local governments and would be so large as to be in the top 0.2% of all school systems in the United States. The ostensible excuse for this requirement that the state restructure its internal government was to "desegregate" the school system of Richmond, for desegregation of school systems was the extent of the charge to the federal courts by this Court in the series of cases beginning with *Brown* v. *Board of Education*, 347 U.S. 483 (1954), and culminating in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), reh. denied, 403 U.S. 912 (1971).

The fact is, however, that the Richmond schools and the Chesterfield and Henrico schools had already been desegregated—they were and are operating as unitary systems—unless by "desegregation" is meant a school system in which there must be a white majority or a racial balance approximating the racial ratio of the three adjacent school systems, both in the combined system and in each school within that system. Indeed, the announced objective of the plan ordered into effect by the district court was to do more than require a simple white majority. To satisfy its notions of "desegregation"—usually transmogrified into a "viable racial mix"—the district court would require a white majority of no less than 60% and no more than 80% in each school within the system.

It was this court ordered plan for a "viable racial mix"—for large white majorities in each school—that the Court of Appeals rejected and that this Court is asked to restore.

We submit that an order requiring white majorities in all schools is not only not mandated by the Constitution or by this Court but would in fact violate the Constitution and the judgments of this tribunal.

B. Origin Of This Litigation

This litigation began on September 5, 1961, with the filing of a class action by the plaintiffs to secure a racially non-discriminatory school system within the City of Richmond. The cruise of these proceedings can be traced through the opinions of the District Court, the Court of Appeals for the Fourth Circuit, and this Court. See *Bradley* v. *School Board of the City of Richmond*, 317 F.2d 429 (4th Cir. 1963); 345 F.2d 310 (4th Cir. 1965); 382 U.S. 103 (1965); 317 F.Supp. 555 (E.D. Va. 1970); 325 F.Supp. 828 (E.D. Va. 1971); 51 F.R.D. 139 (E.D. Va. 1970).

The phase of this litigation with which we are concerned here began in 1970, with a request for further relief by the black plaintiffs against the City of Richmond, demanding that the City establish a unitary system. Prior thereto, the respondents had not been parties to the case, nor had the plaintiffs deemed it necessary or appropriate to join them at that time in order to accomplish the goal of their motion.[3] The district court found that Richmond was not operating a unitary system but concluded that a plan proposed by the plaintiffs and limited to the City would remedy that defect.

[3] At this time it had not occurred to plaintiffs to allege, or the district court to conclude, that a system in which most of the schools were majority black would not be unitary, even though the schools in neighboring Chesterfield and Henrico were approximately 90% white. Nor had it occurred to them that no unitary system *could* be created without the inclusion of white students from these contiguous counties.

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Under that plan, known as the Foster Plan, "the student bodies at the respective schools [ranged] from a black population of 39.2% to 71.8%, although most schools ranged between 50 and 65%." 317 F.Supp., at 568.

About that plan the trial court said (317 F.Supp., at 568):

> Through Dr. Foster the plaintiffs proposed a plan described below, *which the Court finds would result in a unitary system.* (Emphasis added.)

By order entered August 17, 1970, the defendant City was required to implement the plan for the desegregation of the high schools and intermediate schools, but full desegregation of the elementary schools, as called for by the Foster Plan, was not ordered as that would have required extensive cross-town busing, and the City demonstrated its inability to acquire the necessary buses by the start of the 1970-71 session. The Interim Plan for the high and intermediate schools was put into effect in September, 1970, and was the plan in operation for the school year 1970-71 in the City of Richmond. In its order of August 17, 1970, the district court directed the City to file within ninety days a plan for the complete desegregation of all of its schools.

On November 16, 1970, the City advised the court that three definitive plans would be submitted on January 15, 1971, in compliance with the order of August 17, 1970. Two days later, on November 18, 1970, the City filed a "Motion to Compel Joinder of Parties Needed for Just Adjudication under Rule 19." The motion sought to join, as parties defendant, the Board of Supervisors of Chesterfield County, the Board of Supervisors of Henrico County, the School Board of Chesterfield County, the School Board of Henrico County, the State Board of Education, and the Superintendent of Public Instruction.

At the time of this motion, the school systems in both Chesterfield and Henrico had been converted to unitary systems in accordance with the requirements established by this Court in *Green* v. *County School Board*, 391 U.S. 430 (1968).

C. The Chesterfield School System

In 1962, a suit was filed in the District Court under the style, *McLeod* v. *County School Board of Chesterfield County* (PX 147). A general injunction against discrimination in the assignment of students was entered, and the case has lain dormant on the docket while the county effectuated first a freedom of choice plan and more recently a unitary geographical attendance zone plan.

With the advice and guidance of the Department of Health, Education and Welfare (HEW), the county in 1969 and 1970 closed all of its formerly all black schools, some of which have since been reorganized and re-opened as integrated schools with attendance zones drawn upon a non-racial basis (CX 14, 16, 17, 18, 31, 33; RX 115; A. 1000a, 1001a, 1021a).

The operation of schools in Chesterfield County has at all times met with the approval of HEW until the evidentiary hearings in this case commenced. During the late summer of 1971, HEW raised objection to the continued operation of the Matoaca Laboratory School as a racially identifiable (black) facility, if Chesterfield was to continue its participation in the school.

In no real sense may Matoaca Laboratory School be considered a part of the school system operated by the Chesterfield County School Board. It is owned by and operated as a part of Virginia State College. Virginia State is a predominantly black college. The Laboratory School is utilized

by the College in its teacher education program, and possesses superior educational facilities. The administration of the College has historically selected the students who would attend, and Chesterfield's connection with the school has been to provide some incidental services and transportation for the students and to remit to the College the funds received from the State for the average daily attendance of the students assigned there. The county has had no part in the selection or payment of the faculty, the selection of its students or the operation of the school (A. 1021a-1023a).

Upon receipt of the HEW objection, the Chesterfield School Board informed Virginia State College that it could no longer participate in the operation of the school and the connection was severed by mutual agreement (A. 1023a-1024a).

The school system of Chesterfield County, operating under the injunction of the district court and the directions of HEW, is unitary. School attendance zones were not drawn to accomplish racial purposes or for the purpose of concentrating blacks in any school (CX 33). The attendance system is based upon "proximal geographic zoning" with all children, black or white, living within a particular zone attending the school serving that zone.

A comparison of the racial ratio at each school with the pot maps (CX 14) and the census tract maps showing racial distributions of population (CX 39, PX 98) demonstrates that any variations in racial ratios in the schools exist by virtue of residential patterns. The black population of the county is spread generally throughout the county, with the result that there is no school zone with a majority black population. Therefore, there is no school with a predominantly black student body. Every black child in Chesterfield attends a racially desegregated facility.

D. The Henrico School System

Prior to the school year 1969-70, the Henrico County schools were operated on a geographical attendance zone and freedom of choice interim desegregation plan approved by HEW. For the school year 1969-70, a terminal desegregation plan was adopted by the Henrico County School Board which entailed: (1) the temporary closing of certain schools which had remained all-black schools under the interim desegregation plan, (2) the reassignment of all students formerly attending such schools to other schools in accordance with geographical attendance zones (A. 954a-955a).

On November 28, 1969, some three months after the opening of schools under this terminal plan and following an inspection of the Henrico County schools by Dr. Haddock, a member of the staff of the regional Civil Rights Director of HEW (Director), the Division Superintendent of Schools of Henrico County (Division Superintendent) was advised in writing by the Director (Ex. A 97e):

> According to his [Dr. Haddock's] report, you are now operating a unitary, nonracial school system in which no schools are racially identifiable. You, your school board, and your staff are to be commended for the leadership you have shown in meeting the provisions of Title VI of the Civil Rights Act of 1964 and, even more important, providing an equal educational opportunity for all of the students in your school division.

A year later, in a letter of December 10, 1970, again approving the Henrico County system, the HEW Director also stated that the School Board should "utilize every feasible means to further remove the racial identifiably of the Central Gardens student body . . ." (Ex. A. 99e). The Central

Gardens school had housed an all-white student body in the school year 1964-65 (A. 589a). Because of changing residential patterns, the racial composition of the student body had become predominantly black (A. 589a). On May 26, 1971, in response to this admonition, the Division Superintendent apprised the Director that new attendance zone lines had been established to comply with HEW's request (Ex. A. 107e). On June 30, 1971, the Director approved the proposed reorganization in the following language (Ex A. 110e):

> This organization appears to meet the requirements of your continuing responsibility to remove the racial identifiability of Central Gardens as referred to in our letter of December 10, 1970. It also is in accord with the principles enunciated by the Supreme Court on April 20, 1971, in the case of *Swann* v. *Charlotte-Mecklenburg*.
>
> We appreciate the leadership you have shown and look forward to receiving your faculty information."

On April 20, 1971, the HEW Director had informed the Division Superintendent of the approved rule for faculty desegregation (Ex. A. 103e). On May 13, 1971, the Division Superintendent advised the Director that appropriate reassignment o fteachers would be made in accordance with that rule (Ex. A. 105e). On August 11, 1971, the Director addressed a letter to the Division Superintendent approving the faculty assignments so made (Ex. A. 113e).

Manifestly, the Henrico County School Board is operating a unitary, non-racial school system in which no schools are racally identifiable. The Henrico School system complies fully with all judicial and executive guidelines. This system, which was approved by HEW before trial of this case began, was in actual operation at the time of the final decision

by the district court. It is uncontroverted that, on four separate occasions during the past two years, the school authorities have been commended by HEW for their leadership in meeting the provisions of Title VI of the Civil Rights Act of 1964 and in providing an equal educational opportunity for all of the students in the school division (Ex. A. 97e, 101e, 109e, 113e). It is uncontroverted that during that period no recommendation has been made by HEW to the Henrico County school authorities concerning the operation of its schools under the Civil Rights Act of 1964 which has not been followed by the School Board (A. 964a).

E. The Richmond School System

Pursuant to the motion for joinder described above, Chesterfield, Henrico, the State Board of Education and the Superintendent of Public Instruction were joined as parties defendant and plaintiffs were directed to file an amended complaint. It was not until the City of Richmond was faced with an order to effect a unitary system, which would result in desegregated schools with predominantly black student bodies in virtually every school in Richmond, that the City sought to secure an amalgamation of its school system with the unitary school systems of the adjoining counties. It is significant that the plan which the Court of Appeals struck down was proposed by Richmond, with its majority white voting population and predominantly white government, and not by the plaintiffs who, over a decade of bitter opposition by the City, had sought the desegregation of the Richmond schools. The plaintiffs continued to seek implementation of their Foster Plan for a unitary system within the city until they were directed by the district court to seek the broader relief suggested by the City.

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The amended complaint was filed on December 14, 1970. Answers and various motions were filed by the new defendants. Pending a hearing on the issues raised by the new pleadings, the City filed the three proposed plans referred to in the report submitted to the district court on November 16, 1970.[4] A separate hearing was held on these plans in March, 1971, to determine under what plan the schools of the City of Richmond would be operated during the 1971-72 school year.

Plan III,[5] proposed by the City and limited to the City's geographical boundaries, modified the Foster Plan and was chosen by the district court as the more appropriate program because, while it too would effectuate a unitary system, there were other advantages that it would also secure. As the trial court said: "Although operation under either plan would fulfill the School Board's legal duty, it would be fully justified in preferring plan 3 on the basis of whatever administrative or educational reasons it finds persuasive." *Bradley* v. *School Board of Richmond*, 325 F. Supp. pp. 828, 846; Pet. A. 146a. This unitary system was ordered to begin with the 1971-72 school year and, indeed, has been in effect since then.

The Foster Plan

Following hearings in June 1970 on the motion for further relief filed by the black plaintiffs, the district court found that the Foster Plan presented by plaintiffs would, as they asserted, achieve a unitary school system within the City of Richmond. Under that plan, as previously noted,

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[4] Plans 1, 2 and 3, numbered in order of Richmond's preference for each, were offered simultaneously. The district court found that Plans 1 and 2 failed to establish a unitary system. (Pet.A. 116a-118a)

[5] The terms "Plan III" and "Plan 3" are used interchangeably by the District Court and the Court of Appeals and refer to the same plan.

the student bodies at the respective schools ranged from a black population of 39.2% to 71.8%, although most schools ranged between 50% and 65%.

Concerning the Foster Plan, the trial court said (317 F.Supp., at 568, 576; Pet. A. 24a, 41a):

> Through Dr. Foster the plaintiffs proposed a plan described below, which the Court finds would result in a unitary system.
>
> * * *
>
> The Court therefore concludes:
>
> * * *
>
> 2. That the plaintiffs' plan would, if adopted, create a unitary system.
>
> * * *
>
> 4. That while racial balance is not required in each and every school in the system, there is no intractible remnant of segregation in the City of Richmond school system since all parts of the city can be reached by virtue of reasonable amounts of transportation, both as to distances, times and sums involved.
>
> The Court further finds that the adoption of a plan such as suggested by Dr. Foster may well not only create a unitary system, but do much toward the thwarting of resegregation of schools once the unitary system has been put into effect.

PLAN III

As previously noted, the City of Richmond proposed a unitary plan of its own limited to the City's geographical boundaries, which was similar to the Foster Plan and known as Plan III. Concerning this plan, the district court stated (325 F.Supp., at 834-835; Pet. A. 119a, 121a):

> Plan 3 is a different matter. The administrators outline their goals in this manner:
>
> "Plan III represents an effort on the part of the School Board to develop a plan for the operation of

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the Richmond Public Schools in which the attempt is made to remove from the public schools all vestiges of racial identity. The removal of all vestiges of such alleged identity involves whatever means are at the disposal of the School Board. These means include extensive busing of students, proximal geographic zoning, pairing, clustering, satellites, and racial balance among faculties.

* * *

"At the elementary level all schools will have a minority-majority ratio in which each group will be at least one half or 50 percent of the projected city-wide ratio for that group.

* * *

"Thus, a given school would have a projected enrollment of at least 17 percent white, or at least 33 percent black.

* * *

"Attendance zones at the middle school and high school levels have been adjusted to provide projected minority-majority ratios in accordance with the formula stated above for the elementary level."

* * *

. . . the School Board, if this proposal succeeds as planned, will have eliminated the racial identifiability of each facility to the extent feasible within the City of Richmond. This is the extent, under current law, of the affirmative obligation governing use of its available powers: to do away with a system under which one may confidently predict those schools which a given child may attend, and those from which he is effectively barred, by reference to his race.[3]

[3] This conclusion is based upon what can be reasonably expected within the geographical boundaries from which the students for whom the School Board now has responsibility come.

As shown by the report submitted to the court following the opening of schools (RX 98), the plan achieved its announced goals, for the report shows the city enrollment (as of September 7, 1971) to be in a racial ratio of 69% black to 31% white, and the distribution of pupils in the various schools produced a white-black ratio (in all but four of the 57 schools) in which each race had at least one-half or 50% of the city-wide ratio for that group. In the other four schools, the racial ratio is not substantially disproportionate to the projected goal. Clearly, Plan III produced a unitary system in the City of Richmond as the district court found that it would.

The schools of the City of Richmond are being operated at the present time under Plan III which admittedly established a unitary system within the City of Richmond. Indeed they had been operated in this fashion for some four months before the "time of final decision by the district court" decreeing consolidation.

In their statement of the issue plaintiffs invoke the district court's "finding" that at the time of final decision the Richmond School Board was in violation of the Fourteenth Amendment. Viewed in the light of the "conclusion" reached by the district court in approving Plan III ,it becomes obvious that the "finding" asserted by the plaintiffs to establish a constitutional violation must depend upon the proposition that the Fourteenth Amendment forbids the existence of a majority black, though unitary, system alongside a majority white, though unitary, system.

F. The Proposed Consolidation Plan

As previously noted, it was only after the district court stated its approval of the Foster Plan that the City of Richmond came forward with its gerrymandering proposal

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to bring Henrico and Chesterfield Counties into a single school system. What its motives were can only be surmised. Nevertheless, it was at the same time that, in a class action suit brought by and on behalf of black citizens of Richmond, the trial judge in this case said of the most recent annexation of territory by the City of Richmond: "The Court finds that the primary reason [for the annexation agreement] was in order to assure an unquestioned White majority for the upcoming Councilmanic Elections." *Holt* v. *City of Richmond,* 334 F.Supp. 228, 236 (E.D. Va. 1971). Whatever its motives, the effect of the plan would have been to borrow white children from Chesterfield and Henrico so that the white school children of the City of Richmond would be assured of attending schools in each of which there would be a substantial white majority.

Following five weeks of trial in August and September, 1971, the district court, on January 10, 1972, ordered that the three school divisions of Richmond, Henrico and Chesterfield be consolidated and that a plan designed to create a majority white student body in each school be implemented. The order further required that the school boards of the three political subdivisions ,each of which is vested with the constitutional obligation to supervise the schools in its system, be abolished and a single school board created in their place, and that the school properties held by each separate school division as the public property of its citizens and taxpayers be transferred to the newly decreed joint school board. The plan thus mandated requires the interchange of black and white students between the independent political subdivisions to avoid a black majority in any school. (Pet. A. 536a)

The School Consolidation Plan which the City proposed was summarized by its proponents in the following way (A. 143a-146a):

Summary Of Plan

1. The plan is aimed at providing meaningful integration and equal educational opportunity at every school in the Richmond metropolitan area.

2. All schools will reflect a viable racial mix as the primary means to insure not only the achievement of educational goals, but also the attainment of over-all stabilization throughout the system.

3. Free transportation will be provided for all pupils throughout the consolidated division in accordance with existing state standards.

4. The racial composition of the faculties in each school will approximate the racial composition of the subdivision in which the school is located. Exceptions will be made for specialized faculty positions.

5. Recommended organizational structure of consolidated school division:

(a) Consolidated division will be composed of six subdivisions each containing a viable racial mix of black and white students reasonably reflective of the racial composition of the metropolitan area.

(b) Each school within a particular subdivision will contain a viable racial mix.

* * *

A. Rationale For Consolidated Plan

The racial composition of the student population of the three Richmond metropolitan area political subdivisions has been approximately 67 per cent white and 33 per cent black for more than ten years. A racial mix in each school in the Richmond metropolitan area which approximates that of the entire area will be productive of a viable racial mix of black and white students and will provide meaningful integration for all pupils within the consolidated division.

* * *

B. Plan Of Organization

* * *

The six subdivisions will contain a total student population and racial composition as follows:

Subdivision	*No. of Students*	*Per Cent White*	*Per Cent Black*
No. 1	18,123	62.6	37.3
No. 2	20,059	63.4	36.5
No. 3	17,749	64.7	35.2
No. 4	19,086	62.7	37.2
No. 5	19,594	70.0	29.9
No. 6	9,387	81.6	18.3

* * *

Student Assignment

* * *

. . . Where racial imbalances exist, however, students will be exchanged between schools within their particular subdivision in order that a viable racial mix may be maintained in each school in that particular subdivision. Where racial imbalances necessitate the exchange of students between schools, it is recommended that the pupils to be exchanged be selected by any one of the following methods or any combination thereof:

* * *

(3) objective selection, such as utilization of dates of birth.

On the question what is a "viable racial mix," the testimony of the proponents of the plan was clear and unwavering. Dr. Little, Associate Superintendent of the Richmond Schools, was the author of the plan for the Richmond School Board. He testified as follows on direct examination:

Q What was the starting point in devising this plan, sir? A Well, there were a number of starting

points in this. First thing that had to be determined is what are your objectives in the establishment of such a plan.

The objectives that were sought or were aimed for, number one, that each and every school within the City of Richmond, Henrico and Chesterfield County, would be composed of a viable racial mix. (A. 195a)

* * *

Q . . . would you give the factors that you considered in preparing the subdivision breakdown or the subdivision lines? A I believe, as I indicated, factor number one would be that each subdivision at each level and each school would contain a viable racial mix. (A. 201a-202a)

* * *

The Court: So we get the record straight, Dr. Little —I will try not to interrupt counsel again—what was your criteria for viable racial mix?

You used that phrase, and I wondered what you meant by it.

The Witness: Viable racial mix, I mean that, in my opinion, it is a racial mix that is well enough established that it will continue to prosper. It will be a desirable [A-186] reasonable racial mix for educational purposes, as well as meeting the judicial requirements in that.

Generally the parameter ranges from 20 to 40 percent in each school. We have not quite attained that in subdivision six, because I believe there are some instances around 17 percent and in one instance here we are dealing with maybe 40. —well, in subdivision one 40.18. But the general range we are shooting for was 20 to 40 percent in each and every school, and in each and every subdivision. (A. 214a)

* * *

Q Coming to your overall evaluation of the plan, Dr. Little, I wish you would summarize what, in your

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opinion, constitutes the merits of this plan, or any comparable Metropolitan Plan for the Richmond Metropolitan area? A We started out with some objectives to this plan. One of those was the injection of the component of a viable racial mix in each and every school to produce a quality education as a component of a quality education program. I believe this plan will provide the environment for it. Again, how it is implemented will have a lot to do with the quality of the education, but I think that this will create an environment for quality education with the component of a viable racial mix in each and every school in the metropolitan school system. (A. 242a-243a)

On examination by plaintiffs' counsel:

Q . . . What, if you wanted to determine a viable racial mix for a school community, what would you look at? A I would look at the community and what it had.

Q In terms of its pupils? A In terms of its pupils.

Q And the racial composition? [B-59] A And the racial composition, yes.

Q And is that what you have done here in setting up the perimeters [sic] and your goals for the consolidated school plan, or the desegregation plan for the City and the community of Richmond? A Yes. But we are shooting—we were shooting at here the same thing I indicated to you in interrogatories very early in this case when I used somewhere around 30 percent, because I do feel that when you get too much below 30 percent your black child is in isolation and he does not benefit from the experience. When you get too far over that you run into resegregation and a lot of disadvantages of the all-black school.

But yes, in direct answer to your question, yes, for certain we looked at what we had in Richmond and

> fortunately we had a situation where that viable racial mix was available, but not properly dispersed. (A. 250a)

On further questioning by Mr. Lucas, plaintiffs' counsel, Dr. Little said that were that racial mix not available he "would work within the City of Richmond and would not recommend this merger." (A. 253a)

On cross-examination by respondents' counsel, the same adherence to the concept of a viable racial mix was maintained by Dr. Little:

> Q . . . the only reason, really, for the consolidation that you are suggesting, is to bring about the racial balance that you think is appropriate, as much as you can get for each race to associate with [B-121] the other, and not to reach a theoretical tipping point when the process might be reversed and the benefits might be lost. A My only objective in this is to provide an environment for quality education program for the boys and girls of Henrico and Chesterfield County. It is my opinion that a desirable racial composition is a component to a quality education program.
>
> Q And that ratio ought to be what? A That a desirable ratio is a range between 20 and 40 percent.
>
> Q Of black? A Of black, yes, sir. (A. 262a)
>
> * * *
>
> Q . . . If the population of Richmond was 70 percent white or 30 percent black, and the population of Henrico was 70 percent white and 30 percent black and the population of Chesterfield was also 70 percent white and 30 percent black, and the schools within the area reflected that racial composition, would you recommend the school consolidation? A No, I would not recommend this school consolidation, but I would recommend that Henrico and Chesterfield merge with

the counties that are adjacent [B-174] to them that are predominantly black.

Q In other words there is no educational reason, as far as the school system of the City of Richmond is concerned, or any community of interest with the City of Richmond, that would prompt you to make this recommendation that is being made here? A There are certain efficiencies for a large operation that I think would make it desirable, but I don't think that the motives that have caused this suit to be instituted would be present. (A. 263a-264a)

The next "expert" witness on behalf of the consolidation plan was Dr. Thomas Pettigrew, whose name has appeared in a number of "desegregation" cases as an advocate of his scheme for a "viable racial mix." See, *e.g., Beckett v. School Bd. of the City of Norfolk*, 302 F.Supp. 18, 308 F.Supp. 1274 (E.D. Va. 1969), *rev'd, sub nom., Brewer v. School Bd. of the City of Norfolk*, 434 F.2d 408 (4th Cir. 1970); *Brunson v. Board of Trustees of School District No. 1 of Clarendon County*, 429 F.2d 820 (4th Cir. 1970). His testimony on behalf of the plan adopted by the Court was consistent with that of Dr. Little as to the educational desirability and primary objective of a ratio of blacks to whites not to be more than 40:60 nor less than 20:80. Thus, on direct examination, he testified as follows:

Q Based on your research and the studies in the field, is there some type of point at which an environment for meaningful integration, or the term you used earlier, viable racial mix, becomes a possibility? A Yes, sir. You can't make hard and fast rules right down to a single percentage point or anything like that, but I can say with great confidence, and I might say I have been seeing the same thing, increases since I began as an expert witness in the Barksdale case in Springfield in 1965, that the most appropriate effective

percentage, I think, for interracial maximizing the opportunity of getting integration in the way I have just defined it, would be from 20 to 40 percent black.

And I would like to explain that a little, if I may, Mr. Little.

Q Yes, sir. A At the 20 percent level, I think below that, and I don't want to make an argument between 17, 18 and 20, obviously, but I am talking about 20 and ten, you know, I don't to make [*sic*] any case two or three percentage points in either direction, but I am talking about a real range between 20 and 40. I think below 20, [C-17] frankly, is tokenism and it has harmful effects. I think it fails to maximize some of the possibilities of the positive effects of integration. (A. 273a)

* * *

At the other end, the 40 percent, in the Barksdale case I had said 20 to 45 and I might say I said that before the Coleman Report and that is because the Coleman Report findings did not in fact surprise me. They were very similar to many that had already been established, but in much smaller definitive studies. I moved down from 45 to 40 on the basis of what I learned in working for the Commission of Civil Rights about stability. I really think that the 40 [C-18] percent figure relates in particular to stability.

* * *

. . . but it is a general statement that can be confidentially [*sic*] made that as you get above 40 percent you will have great difficulty maintaining stability of the racial percentage. And you are very likely to go from 45 to 50 very rapidly to 75 and more. So I learned this first with the Commission on Civil Rights which study gave me the first chance to look at education all over the country intensively. (A. 274a-275a)

In discussing an example of this phenomenon, Dr. Pettigrew emphasized:

. . . That is a national trend in urban systems. So I would argue that 20 percent avoids tokenism and 40 percent maintains stability. The 20 to 40 percent mix maximizes possibilities for integration and the positive benefits for integration that I previously outlined. (A. 275a)

Dr. Pettigrew further testified:

Q Doctor, are you familiar with the projected racial composition of all of the Richmond schools under [C-22] Plan III which will be implemented in two weeks? A Yes, sir, in a general way.

* * *

Q Have you made an analysis of the number and percentage of Richmond students who will be attending schools in the range of 20 to 40 percent black under Plan III? A Yes, sir. For both white and black students, as is clearly evident in Exhibit 70, Plan III will not provide this at any of the levels for either race.

Q Would you show what percentages are, say, at the elementary level within the 20 to 40 percent range and the blacks and the whites? A Well, K through five, kindergarten through five in the elementary level for black students is only three percent, 3.04. For white students it is 9.43. Percentage of the white students will be in the [C-23] range of 20 to 40 percent. I assume that includes the 41 percent school or 19 percent school.

The middle level, six to eight, only 9.2 percent of the black students would be in the range of 20 to 40 percent black schools. 26.76 percent of the white students would be in such optimally arranged schools.

At the high school level, nine through twelve, none of the black students and none of the white students would be in the type of school I have been describing as having maximal potential for integration.

Q Well, now in your opinion then as a specialist in race and education, what is the likelihood of their

[*sic*] being, under Plan III, meaningful integration, quality education in the public schools of Richmond under Plan III? A Well, Mr. Little, Plan III may well be—I haven't studied it in detail and I was not part of this case when Plan III, of course, was up for discussion—it may well be, as best I know, the best available alternative in a non, or even antimetro context that it was drawn up in. It is certainly not, however, a situation that it likely to be stable, in [C-24] my opinion, based on experience of other districts throughout the urban America. It is certainly not ideal, obviously, given my thoughts that I have already expressed about the maximal benefits available under 20 to 40 percent black. In other words, I think it pales beside the proposed Metropolitan Plan in potential effectiveness.

* * *

. . . Yes, sir. Under the proposed consolidated division, 97 percent of the black students would attend schools in the range of 20 to 40 percent with the remaining three percent being in 15 to 20 percent black schools, which doesn't upset me too much.

[C-27] Under the proposed Metropolitan Plan, 92.5 percent of the white students could avail themselves of the opportunity of attending such schools and the remaining 7.5 percent would be in those, you know, subdivision six schools ranging from 15 to 20 percent black. (A. 277a-280a)

On cross examination by respondents' counsel, Pettigrew said:

Q Well, do I understand you to say that your objection to a predominantly black school is that you view it as inferior or that the community may view it as inferior? A I would like to make the distinction between my view and what I view the community viewing. I think the community views, and not just in the south, and not just whites, predominantly black schools to be inferior. (A. 306a)

* * *

Q "Desegregation is a mere mix of bodies, black and white in the same school, preferably in some 20 to 40 percent or 45 percent black ratio." A Yes, sir. What I meant by preferably was, of course, that would up the possibility of getting the integration. (A. 309a)

* * *

Q . . . If you had a system which is set up in which each school in a metropolitan area has your optimal desegregation percentage between 20 and 40 percent black and the remainder white, would you advocate maintaining that ratio to maximize integration, as you understand it and as you have defined it throughout the system? A If we could manage it in every school in the metropolitan area, I would certainly advocate it.

Q Maintain that ratio? A Yes, sir, if it is possible. (A. 311a)

The notion that black majorities cannot provide a "viable acial mix" was underlined again by the testimony of Dr. Carmichael, the third of the petitioners' principal "expert" witnesses. He said, in plain terms, that a school is a "black" chool when the majority of students is black:

Q Now, coming for a moment to the proposition [D-50] placed by Mr. Gravatt that a child in the City of Richmond who is in a school situation in which the ratio is 65 percent black and 35 percent white, I believe you said that that ratio would give the child a sense of inferiority in that situation because the school would be identifiable as a black school, is that correct? A That is one of the feelings that I think you will have. (A. 397a)

* * *

Q So that in your opinion the Negro child is educationally in a better position if he is in a situation in which he is not in the majorty in the particular school

by race? A I think it is better if he is not. (A. 398a)

* * *

Q . . . But in any event, as you understand the plan, . . . the ratios which are established under it would be stabilized, that the percentages of Negroes would be maintained between 20 and 40 percent. And you were here during Dr. Little's testimony, were you? A Yes.

Q He said that if an urban development or a highway or throughway changed the character of a neighborhood, then adjustments would be made in the plan to keep the ratio at 20 to 40 percent? A Adjustments are not made in the plan. Adjustments are made in the method of assigning pupils to a given area within the plan.

Q In effect, I believe they would do it by computer and by lottery? A Right.

[D-61] Q So that under this plan from the time a Negro child is born until he finishes his educational career, indeed forever, he will always be computerized into a minority racial educational experience. Is that correct? A I have one reservation. You made it appear as if it is a 50-year kind of operation and the real point, I think, is that to begin and operate such a system in the immediate future, then that is correct.

Q Well, indefinitely, shall we put it, indefinitely under the plan, the child, the Negro child will always be? A First for either five or six years, depending upon what you put into the school, and then possibly for three years, depending upon what you put in the school, and then four years.

Q This is not what is envisioned under this plan? A Yes, it is.

Q This plan envisions, does it not, maintaining these ratios? A It envisions maintaining those ratios, yes, sir.

Q All right.

[D-62] Now, you said, Doctor that a 65 black ratio to white identifies a school and the child feels that he is in a racially identifiable school and this has a deleterious effect upon his learning experience.

Now, you say that if you change the ratio that that is not the case, that if it is a 65 percent white school and 35 percent black, he does not have this feeling. A I said that the school was not considered a black school and he does not have the feeling that he is in a black school which is an inferior school. (A. 403a-404a)

* * *

Q . . . Now, my question is, if that is true, then does it not follow that the ratio must always be maintained so that the Negro is in the majority situation?

[D-65] The Court: Majority?

The Witness: Minority.

By Mr. McIlwaine:

Q Minority, in the minority situation? A To deal with the present perceptions of what a school is and what is inferior and superior, that is true.

Q And this plan undertakes to see that that minority situation will be maintained? A For purposes of dealing with the existing problems, yes. (A. 406a)

The next "expert" witness, Dr. Lochran C. Nixon, Jr., ok the same position:

Q . . . You have referred to viable racial mixes as being essential to quality education. What do you mean by viable education mix? A You mean viable racial mix, Mr. Gravatt?

Q Racial mix, yes. A I support the definition that has been provided to us by the accumulating body

of research that has been used in testimony in Court and that is a high percentage somewhere in the range of 20 to 40 percent. (A. 439a)

* * *

That the judgment of the trial court rested on this "expertise" about the necessity for a "viable racial mix" is attested by the language of the trial court throughout its opinion. It is perhaps best epitomized by the following quotation from that opinion (338 F.Supp., at 194-195; Pet. A. 437a-439a):

> To achieve "integration," in Dr. Pettigrew's terms, one must have the "mix plus positive inter-action, as we would want to say, between whites and blacks." Current research indicates that in order to achieve these benefits there is an optimum racial composition which should be sought in each school. Dr. Pettigrew placed this at from 20 to 40% black occupancy. These figures are not at all hard and fast barriers, but merely indicate to the racial composition range in which inter-action of a positive sort is the more likely to occur.
>
> * * *
>
> Based upon projected enrollments under the current assignment plan for Richmond city schools, very few students will be in schools with a black population of 20 to 40%. At the elementary level, 3.04% of the black students and 9.43% of the white students will be in such schools. In middle schools 9.2% of blacks and 26.7% of whites will be in schools in that range. There will be no high school students in such schools.
>
> * * *
>
> If the Richmond metropolitan area consolidation plan were implemented, 97% of black students in the

area would attend schools in the range of 20-40% black; the remainder would be in 15-20% black schools. Under that plan 92.5% of the white students in the area would be in schools of the optimum mix determined by Dr. Pettigrew, and 7.5% would be in schools with a 15-20% black enrollment.

Thus was the goal established—the "viable racial mix" formula; the deficiency in the existing systems was established—the failure to accommodate to the "viable racial mix" formula; and the means of accomplishing the goal was established—a mandate to conform to the "viable racial mix" formula.

However far and fast the petitioners—and even the district court judge—may have attempted to run from the fact that the adopted plan rested exclusively on the theory of a "viable racial mix," the requirement of a white majority of between 60 and 80% wherever possible, the Court of Appeals for the Fourth Circuit recognized that the sole thesis supporting the plan was one that had clearly been forbidden by the decisions of this Court.

The Court of Appeals, sitting en banc, stated the issue in this manner (462 F.2d at 1060-1061; Pet. A. 562a-563a):

> May a United States District Judge compel one of the States of the Union to restructure its internal government for the purpose of achieving racial balance in the assignment of pupils to the public schools? We think not, absent invidious discrimination in the establishment or maintenance of local governmental units, and accordingly reverse.
>
> This is a new aspect of an old school case begun in 1961. Neither the parties to this appeal nor the numerous amici permitted to file briefs question the duty of the Richmond School Board to achieve a unitary school system. . . . Indeed, it is virtually conceded and

established beyond question that, albeit belatedly, Richmond has at this junction done all it can do to disestablish to the maximum extent possible the formerly state-imposed dual school system within its municipal boundary.

What is presented on appeal is whether the district court may compel joinder with Richmond's unitary school system two other school districts (also unitary) in order to achieve a greater degree of integration and racial balance. The district judge felt compelled to order consolidation of the three school units partly because of his concern with what seemed to him an unfortunate racial balance in the three separate systems and partly because he felt this racial balance was the result of invidious state action. In his concern for effective implementation of the Fourteenth Amendment he failed to sufficiently consider, we think, a fundamental principle of federalism incorporated in the Tenth Amendment and failed to consider that *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), established limitation on his power to fashion remedies in school cases.

G. The Role Of The State Board Of Education

No Power To Consolidate School Systems

Under the Constitution of Virginia of 1902 the State Board of Education had no authority to consolidate the schools or the school systems of the individual political subdivisions of Virginia. Section 132 of the Constitution of 1902 vested in the State Board of Education the authority to "divide the State into appropriate school divisions, comprising not less than one county or city each, but no county or city shall be divided in the formation of such divisions." Because Section 133 of that Constitution vested the supervision of schools in each county and city in the local school board, however, the inclusion of two localities within

one school division only had the effect of permitting one division superintendent to serve the two localities.[6]

Placing two localities in one school division did not invest the State Board of Education with the power to require a merger of the local schools or to direct the assignment of the pupils of one locality to the schools of the other locality within the division. Each county or city still retained its own independent school system which, by constitutional mandate, would be supervised by its own school board.

The effect of these constitutional provisions should have been abundantly clear to the district court by reference to cases which had come before it in which counties—joined into one division under the provisions of Section 132 of the Constitution for the purpose of sharing the same division superintendent—filed with the district court their separate, distinct and differing desegregation plans which that court approved in separate suits against each county.[7]

The foregoing limitations on the effect of the creation of divisions is made plain by Section 133 of the Constitution of 1902. In addition to vesting supervision of local schools in local school boards, that section also authorized the General Assembly to provide for the consolidation into one school

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[6] "There shall be oppointed by the school board or boards of each school division, one division superintendent of schools . . . ." Section 133, Constitution of 1902.

This device of including two localities within one school division for the purpose of permitting one division superintendent to serve both localities was utilized to allow small or poorer school divisions to share the cost of the division superintendent of schools.

[7] One such situation, which the district court could scarcely have forgotten, involved New Kent County and Charles City County both of which were included in the same school division. See, *Green* v. *School Board of New Kent County*, (E.D. Va. 1966), 382 F.2d 338 (4th Cir. 1967), rev'd. 391 U.S. 430 (1968), and *Bowman* v. *School Board of Charles City County*, (E.D. Va. 1966), 382 F.2d 326 (4th Cir. 1967).

division of two or more localities with the supervision of all schools in the localities being vested in a single school board. Pursuant to this authorization, the General Assembly, in 1954, enacted Va. Code §§ 22-100.1, et seq. Under those statutes, as they existed prior to their amendment in 1971, a multi-locality division with a single school board could only be established by the majority vote of the school board of each affected county and or city with the approval of the governing body of each affected locality and the approval of the State Board of Education. Such a school division has never been established in Virginia. It should be specifically noted that, prior to the order entered in this case on January 10, 1972, requiring such actions, neither the school boards of Richmond, Henrico or Chesterfield nor any of the governing bodies of those localities ever requested the State Board to take such action (462 F.2d, at 1067; Pet. A. 577a).

The Commission on Constitutional Revision[8] clearly recognized the status of Virginia law as described above in its report submitted January 1, 1969.[9] After reaching the

[8] The Commission was chaired by Albertis S. Harrison and included as its members Albert V. Bryan, Jr., George M. Cochran, Ted Dalton, Colgate W. Darden, Jr., Hardy C. Dillard, Alexander M. Harmon, Jr., Oliver W. Hill, J. Sloan Kuykendall, Davis Y. Paschall and Lewis F. Powell, Jr.

[9] On pages 205-206 of its report the Commission stated:

> "Under the present Constitution, a 'division' is an administrative unit to the extent that it is under the supervision of a single superintendent; otherwise the school system is divided into counties and cities, each of which has a separate school board and a separate fiscal structure. Under existing legislation, the State Board of Education may consolidate two or more counties, cities, or counties and cities, into a single school division, but they will remain separate fiscal units with separate school boards unless the affected governing bodies agree to establish a single school board. In practice no such agreement is ever reached, and efforts to persuade the General Assembly to effect fiscal consolidation of school divisions have never succeeded."

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conclusion that the then existing constitutional provisions did not authorize the State Board of Education to consolidate school divisions effectively, and believing that in the case of small divisions the State Board should have that authority, the Commission on Constitutional Revision recommended that the constitutional powers of the State Board regarding consolidation be amended to vest in the State Board full authority to consolidate independent political subdivisions into one school division for operational purposes. Had the Constitution been adopted as the Commission proposed, the law of Virginia would now confer upon the State Board the powers erroneously attributed to it by the petitioners and the district court.

In proposing the new Constitution and submitting it to the voters for ratification, however, the General Assembly significantly altered the provision suggested by the Commission. As proposed by the General Assembly and adopted by the people before the motion for joinder in this case was filed, the Constitution does not give the State Board of Education unfettered authority to establish, consolidate, or revise school divisions. On the contrary, as adopted, Section 5 of Article VIII of the Constitution of 1971 subjects the State Board's power to divide the Commonwealth into school divisions to "such criteria and conditions as the General Assembly may prescribe."

Following the adoption of the new Constitution, the General Assembly, at its extra session of 1971, provided for a legislative study commission to recommend criteria and conditions to be prescribed by the General Assembly. The General Assembly further provided that until the commission made its report, the State Board of Education, in dividing the State into school divisions, shall be governed by the following conditions which are set forth in Va. Code § 22-30:

(1) No school division shall be composed of more than one county or city;

(2) No school division shall be composed of a county or city and any one of the following towns: Abingdon, Cape Charles, Colonial Beach, Fries, Poquoson, Saltville, or West Point.

Notwithstanding any of the above criteria and conditions, the Board of Education may, upon the request of the school boards of the counties, cities, and towns affected, concurred in by the governing bodies thereof, consolidate or otherwise alter school divisions.

By providing that no school division shall contain more than one county or city, Va. Code § 22-30 has the effect of preserving the status created by Section 133 of the former Constitution that each county and city have its own school board. The exception to Va. Code § 22-30 allowing consolidation of two or more counties or cities into a single school division only upon the request of each local school board and the consent of each local governing body corresponds to Va. Code §§ 22-100.1 et seq. as it existed prior to its amendment in 1971. Thus Section 5 of Article VIII of the Constitution and Va. Code § 22-30 impose upon the State Board the same limitations regarding consolidation as did Sections 132 and 133 of the Constitution of 1902 and Va. Code §§ 22-100.1 et seq. prior to its amendment.

On June 25, 1971, acting pursuant to Va. Code § 22-30, the State Board divided the State into school divisions along the political subdivision boundary lines of each county and city, thereby constituting each county and city a separate school division with a separate school board. This action had no effect upon the school division boundaries of Richmond, Henrico, and Chesterfield. These school divisions, which have been separate divisions since at least 1871, were thus not "newly drawn" as asserted by the district court.

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The Court of Appeals summarized the Virginia law on this subject when it held:

> Thus neither under the old constitution and statutes in effect prior to July 1, 1971, nor under the new constitution and statutes in effect after that date, could the State Board of Education, acting alone, have effected the consolidation of the school systems of Richmond, Henrico and Chesterfield into a single system under the control of a single school board. (462 F.2d, at 1067; Pet. A. 577a-578a)

Division Of Powers Between The State Board Of Education And The Local School Boards

As previously noted, Section 133 of the Constitution of 1902 vested in the local school board the supervision of schools in its county or city. Similarly, Section 7 of Article VIII of the Constitution of 1971 vests the supervision of schools in each school division in the local school board. Thus, the day-to-day authority over the management and control of all public elementary and secondary schools is squarely placed on the local school boards.[10] As the Court of Appeals held, "The power to operate, maintain and supervise public schools in Virginia is, and has always been, within the exclusive jurisdiction of the local school boards and not within the jurisdiction of the State Board of Education." (462 F.2d, at 1067; Pet. A. 576a)

Virginia's school boards differ from those in most states in their fiscal dependence upon their local governing bodies. The school boards have no authority whatever to levy taxes or appropriate funds for school purposes. The power to raise local funds to support the schools is within the exclusive jurisdiction of the local governing body. Thus, the school

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[10] See *San Antonio Independent School District* v. *Rodriguez*, ... U.S. ....., (Slip opinion page 47, fn. 108).

boards' annual operating budgets and requests for issuance of bonds for capital outlay must receive the approval of the local governing bodies (RX 69, p. 336). In Virginia school boards can only expend such funds as are made available to them from local, state and federal sources.[11]

In operating, maintaining and supervising the public schools committed to their charge, the local school boards make all essential decisions affecting their schools, thereby guaranteeing the greatest participation by those most directly concerned.[12] As recognized by the district court in an earlier phase of this case, the assignment of pupils is made by the local school board (317 F.Supp. 555, 563 (E.D. Va. 1970); Pet. A. 13a). Among other enumerable powers specifically vested in local school boards are: (1) the authority to provide for pupil transportation, Va. Code §§ 22-72.1, 22-97.1; (2) the authority to regulate pupil conduct, Va. Code §§ 22-72, 22-97, including the prerogative to suspend or expel for disciplinary reasons, Va. Code § 22-231; (3) the power to hire and terminate the employment of teachers and other personnel, Va. Code § 22-203, as well as the authority to specify conditions of their employment and their assignment in particular schools, Va. Code §§ 22-72, 22-97, 22-200; and (4) the authority to select textbooks for use in the division's schools, Va. Code § 22-318. Local school boards determine grading and pro-

[11] In the year 1969-1970, the local school divisions in Virginia received approximately 871 million dollars from local, state and federal sources for operation of public schools. Of this amount, 530 million emanated from the localities, 225 million were from direct appropriations by the General Assembly under a formula set out in the Appropriations Act, and 91 million came from federal sources. Only some 27 million (3%) was distributed under the rules and regulations of the State Board of Education. (Pet. A 267a; A. 927a-928a)

[12] See *San Antonio Independent School District* v. *Rodriguez*, ... U.S. ....., (Slip opinion page 47, fn. 108).

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motion policies,[13] and recreational and athletic policies. They also determine whether to operate night schools, Va. Code § 22-222.

The authority and power to select appropriate sites for school buildings is also vested in the local school board. No power exists anywhere in State government, or even in the people at large, to compel a local school board to build a school or locate it at any site other than that selected by the local school board. On two occasions the Virginia Supreme Court has specifically so held. *School Board of Carrol County* v. *Shockley*, 160 Va. 405, 168 S.E. 419 (1933); *Howard* v. *County School Board*, 203 Va. 55, 122 S.E.2d 891 (1961). Indeed, in *Howard*, after noting that Section 133 of the Constitution (now Section 7 of Article VIII of the Constitution) vests the supervision of schools in the local school board, the Supreme Court held, "In such supervision it is an essential function of the local board to determine whether a particular property is needed for school purposes and the manner in which it shall be used." 203 Va. at 58, 122 S.E.2d at 894. The power of eminent domain is vested in the local school board to insure that it is capable of obtaining the school sites of its choice, Va. Code § 25-232.

The only attempt by the General Assembly to centralize control of local public schools was resoundingly rebuffed by the Supreme Court of Virginia when it declared the "massive resistance" laws violative of the powers vested in local school boards under the Virginia Constitution. *Harrison* v. *Day*, 200 Va. 439, 106 S.E. 2d 636 (1959). In that case, the Supreme Court of Virginia ruled on the question of intervention by the State Board of Education in the super-

[13] For example, Chesterfield, unlike Richmond or Henrico, has an ungraded pupil program in elementary schools in which a student is allowed to function at his individual level of ability in a given subject (A. 1018a-1021a).

vision and operation of local schools, 200 Va. at 452, 106 S.E. 2d at 646-47:

> Again, the Act . . . providing for the closing of schools because of integration, divesting local authorities of all power and control over them, and vesting such authority in the Governor, violates Section 133 [now Art. VIII, § 7] of the Constitution which vests the supervision of local schools in the local school boards.
>
> * * *
>
> Similarly, the Act . . . providing for the establishment and operation of a State school system to be administered by the Governor and under the supervision of the State Board of Education, violates Section 133.

Virginia's system of local control is similar to that described in *Smith* v. *North Carolina State Board of Education*, 444 F.2d 6 (4th Cir. 1971). There the district court ordered the State Board to participate in the preparation of desegregation plans for local school districts. Because the State Board had no control over the assignment of pupils, a matter completely under local control in North Carolina as in Virginia, the Court of Appeals vacated the district court's order requiring the State Board to participate in the formulation of such plans.

In *San Antonio School District* v. *Rodriguez*, ... U.S. ..... (No. 71-1332, decided March 21, 1973), this Court after a review of the powers vested by Texas law in local school boards, declared that Texas education was "largely a local function." It cannot be doubted that in Virginia, where the Constitution and statutes vest the power to operate, maintain and supervise public schools within the exclusive jurisdiction of the local school boards, that education is also largely a local function subject to local control. (Slip opinion page 47, fn. 108)

H. Demography

The district court heard much testimony concerning the effect of governmental actions and the use of racial covenants on the demographic distribution of the Richmond Standard Metropolitan Statistical Area (SMSA).

The record, however, reveals no governmental action by the State or County defendants that has had any substantial impact on the residential patterns in the counties. To the contrary, the zoning laws, building restrictions and license requirements in both counties are less restrictive than those of the city (A. 168a, 176a, 860a, 886a, 1276a). Indeed, a witness for the plaintiffs testified than an independent study of the administration of the zoning laws in the Richmond SMSA disclosed "no evidence to support [racially] discriminatory zoning practices whatsoever" (A. 503a).

The development of suburbia in Henrico and Chesterfield occurred after the period when racial covenants could have affected demographic patterns anywhere in the nation. It was following 1950 that each of the two counties experienced their periods of greatest growth (Ex. A. 8e). During that period, not only were racial covenants unenforceable as a matter of law, but, subsequent to 1950 they were rarely inserted in deeds in the two counties (Ex. A. 117e-123e, 133e-144e). No suit to enforce a racial covenant in either county at any time was disclosed by the evidence, and there was uncontradicted positive evidence that no such suit had been filed since 1936 in Henrico and 1938 in Chesterfield (Ex. A. 94e, 95e, 127e).

The population of Henrico County increased by only about 15,000 in the 1940's, but grew by 97,000 in the period 1950 to 1970. Thus, 63% of Henrico's 1970 population was gained since 1950 (Ex. A. 8e).

In Chesterfield County, as it was prior to the 1970 annexation, the population increased by only 9,000 in the 1940's, but increased by 81,000 between 1950 and 1970. Thus, 66% of the 1970 population in this area was gained since 1950 (Ex. A. 8e).

The movement of population to the suburbs in the Richmond SMSA is a repetition here of a phenomenon observable across the nation (A. 630a, 643a, 650a, 1073a; Ex. A. 124e- 125e). As the plaintiff's own witness, Dr. Karl Taeuber, "an expert witness and noted demographer"[14] repeatedly testified:

> Q Was Richmond, Virginia, one of the cities included in the study? A Yes, it is.
>
> Q What were the general findings of your study, sir, with reference to segregation indexes, residential segregation indexes of the cities? A We found by examining these indexes, using data from 1960 census, the corresponding data from the 1970 census, are only now beginning to be published. We found a residential segregation of the races was very pronounced, was [1-11] pervasive throughout the United States. That this pattern occurred in cities in all regions. It occurred in cities of all types, whether manufacturing cities or retail trade centers, whatever the character of the city. (A. 630a)
>
> * * *
>
> Q Dr. Taeuber, did I understand you to testify that the racial distribution in the City of Richmond generally conforms to the pattern of racial distribution in all of the large cities of the United States without regard to what type of city it may be? A Yes. (A. 643a)
>
> * * *

[14] Brief for Petitioners in No. 72-550, p. 32.

Q Now, what has been the trend of population movement, generally, throughout the United States from approximately 1948 up until after the 1960 census with respect to movement of population into or out of the central city? A There has been a continued movement of people in a very complex pattern whose net result is a very rapid growth of the suburban areas and a relative stability of the city areas.

Q So that what has happened in the City of Richmond with relation to Henrico and Chesterfield County is characteristic of what has happened generally throughout [I-33] the metropolitan areas of the United States, is that true? A In a very general way, yes.

Q Well, isn't it a fact that almost uniformly the white population generally, those who could afford it, have moved out of the central city and into the countryside and developed the countryside into suburban areas during the last 30 years from 1940 up until the present? A This is a general proposition, but it seems more true generally than precisely of Richmond in terms of the data I have looked at.

Q What do you mean by that? A In the sense that the white population of Richmond has not declined as it has in large numbers of other cities so that the characterization of large numbers of whites moving out of the city to the suburbs may not apply in quite the same way.

* * *

[I-34] Q But the City of Richmond white population has maintained stability? A It has increased some, yes, sir. (A. 643a-644a)

* * *

Q Well, did you calculate for the 200 cities that you did use the same index? A Yes.

Q For each of them? A Yes.

Q And would this be a true statement of your results that you found "Almost all of the cities studied

> were more than 70 percent and many were in the 80's or 90's, that this demonstrated that racial residential segregation is not unique to one city or one type of city but is a common pattern among American cities. It prevails in the north and in the south, among industrial cities, among resort cities, university towns, large cities, smaller cities, in effect it was a universal pattern"? A Yes. (A. 650a)

Contrary to popular belief and even to the surprise of the Richmond City Planner (A. 179a-180a), the net in-migration of blacks to the City of Richmond has been negligible (0.8%). During the decade 1960-1970, despite an increase in the black population in the city of 13,433, the net in-migration accounted for only 782 of that gain, or an average gain of 78 blacks per year (A. 651a). It is clear, therefore, that the increase in the black population is not the result of movement out of the adjoining counties by black citizens. The net in-migration of whites to the city, including those acquired by annexation, exceed that of blacks, totalling approximately 16,000 (A. 654a).

The construction and location of schools in the counties has followed, rather than precipitated, residential growth in the counties. In every case, schools built in the counties were needed to alleviate existing overcrowding and new schools were substantially filled as soon as they were completed (A. 978a-980a, 981a, 1000a).

In light of the foregoing, the Court of Appeals could not do otherwise than conclude (462 F.2d, at 1066; Pet. A. 574a-575a):

> We think that the root causes of the concentration of blacks in the inner cities of America are simply not known and that the district court could not realistically place on the counties the responsibility for the effect that inner city decay has had on the public schools of

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Richmond. We are convinced that what little action, if any, the counties may seem to have taken to keep blacks out is slight indeed compared to the myriad reasons, economic, political and social, for the concentration of blacks in Richmond and does not support the conclusion that it has been invidious state action which has resulted in the racial composition of the three school districts. Indeed this record warrants no other conclusion than that the forces influencing demographic patterns in New York, Chicago, Detroit, Los Angeles, Atlanta and other metropolitan areas have operated in the same way in the Richmond metropolitan area to produce the same result. Typical of all of these cities is a growing black population in the central city and a growing white population in the surrounding suburban and rural areas. Whatever the basic causes, it has not been school assignments, and school assignments cannot reverse the trend.

I. *Conclusion.*

The Court of Appeals concluded:

> Because we think the last vestiges of state-imposed segregation have been wiped out in the public schools of the City of Richmond and the Counties of Henrico and Chesterfield and unitary school systems achieved, and because it is not established that the racial composition of the schools in the City of Richmond and the counties is the result of invidious state action, we conclude that there is no constitutional violation and that, therefore, the district court exceeded his power of intervention. (462 F.2d at 1070; Pet. A. 582a-583a).

In sum, the essential facts that should engage this Court's attention are these:

1. The school systems in the City of Richmond, and the Counties of Henrico and Chesterfield are unitary systems.

2. The three school systems are integral parts of the city and county governments upon which they are dependent for financing and are not separate, fiscally independent school districts.

3. The boundaries of the city and counties were not created nor have they been manipulated to further segregation or to prevent desegregation of any of the school systems.

4. The demographic changes in the Richmond area are duplicative of those that have taken place throughout the nation.

5. The sole purpose and effect of the plan struck down by the Fourth Circuit was to assure substantial white majorities for children attending the Richmond schools.

SUMMARY OF ARGUMENT

The sole issue in this case is whether the Constitution compels the consolidation of three unitary school systems in order to effect a "viable racial mix," *i.e.*, a white majority in every school of not less than 60% nor more than 80%. This is not a busing case; it is a racial balance case.

I. There must be a constitutional violation to justify the substitution of federal judicial power for the legitimate authority of the state and local governments in the area of education. *Swann* v. *Board of Education*, 402 U.S. 1 (1971). There is no constitutional violation to afford a predicate for judicial action here.

A. All three school systems involved in this case are unitary systems that are in compliance with the requirements of the Constitution and federal statutory law. The function of judicial intervention in "desegregation cases" is only to dismantle a dual system and establish one which

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is unitary. *Green* v. *County School Board*, 391 U.S. 430 (1968); *Swann*, 402 U.S. at 31-32. That result has already been accomplished in each of the three systems involved here.

B. There is no constitutional violation on which to base the decree of the trial court in this case.

1. Absence of a "viable racial mix" is not a constitutional violation. *Swann*, 402 U.S. at 16, 24. Indeed, the requirement of a "viable racial mix" would be itself unconstitutional. *Brunson* v. *Board of Trustees of School District No. 1 of Clarendon County, South Carolina*, 429 F.2d 820, 824, 826 (4th Cir. 1970).

2. The demography of the Richmond SMSA, which is typical of the national pattern of concentration of blacks in the central city and whites in the surrounding areas, does not constitute a constitutional violation. There is no showing here "that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools." *Swann*, 402 U.S. at 32.

3. The history of segregation in Virginia does not reveal a constitutional violation to be abated by judicial action here. There is no nexus between any of the past wrongs and the alleged need for a racially balanced consolidated school system. A plan to effect a "viable racial mix" would itself be a throwback to the kind of segregation by race that *Brown* v. *Board of Education*, 347 U.S. 483 (1954), *Green*, and *Swann* have condemned. The district court judgment would, indeed, turn back the clock to that period of Virginia history that Virginia itself has now clearly rejected. Virginia's "original sin" cannot justify the trial court's judgment. *Swann*, 402 U.S. at 31-32.

4. The failure of the State Board of Education to compel the consolidation of the three school systems is not a constitutional violation. The State Board has no power to effect such a consolidation. *Bradley*, 462 F.2d at 1067. It should not do so if it could, since the only justification for such consolidation is to effect a "viable racial mix," which is at least constitutionally suspect. There has been no "white flight" from the city schools to the county schools; nor was there any impropriety in the siting of schools in the counties. There is no obligation of the State to effect a "racially balanced" school system, *Swann*, 402 U.S. at 16, much less to consolidate three unitary systems in order to effectuate such a racial mix.

5. Failure of the respondents to offer a consolidation plan is not a constitutional violation. *Swann*, 402 U.S. at 16.

6. This Court must not say that black majority schools are intrinsically inferior or that black majority schools impose a feeling of inferiority on those black students who attend them. Were it to do so, this Court would have to reject the elemental holding of equality of the races in *Brown*. It would also require the reversal of its holdings in *Swann* and *Emporia*, that racial balance even within a single school system is not a constitutional requirement. *Swann*, 402 U.S. at 24; *Wright* v. *City Council of Emporia*, 407 U.S. 451, 464 (1972).

II. The judicial "remedy" of consolidating three unitary school systems in order to effect a "viable racial mix" among them is both improper and invalid. The "nature of the violation determines the scope of the remedy." *Swann*, 402 U.S. at 16. Since there was no constitutional violation here, there is no basis whatsoever for a "remedy." "Disparity in

the racial composition of the . . . systems would [not] be a sufficient reason," standing alone to mandate the creation of the consolidated school system. *Emporia*, 407 U.S. at 464.

All relevant factors to be considered in determining the propriety of federal court intervention to restructure state government weigh against the action of the trial court here.

There is here no "white flight" from the city schools to the county schools; there is no difference in quality between the city schools and the county schools; the timing of the trial court's proposal for gerrymander, immediately after Richmond reached unitary status; all of these factors read against approval of the decree. *Emporia*, 407 U.S. at 464-65.

The proposed decree would invalidly destroy local control over the most essential function of local government education. *Emporia*, 407 U.S. 469, 478; *San Antonio School District* v. *Rodriguez*, No. 71-1332, decided 21 March, 1973, slip opinion at pp. 45-46. The restructuring of local governmental units to effect a "viable racial mix" is beyond the scope of federal judicial power. *Spencer* v. *Kugler*, 326 F.Supp. 1235 (D.N.J. 1971) aff'd, 404 U.S. 1027 (1972); *Emporia*, 407 U.S. at 471-72; *San Antonio School Dstrict*, *supra*. Such a consolidation decree as the trial court ordered here would invalidly separate the school systems from their local financial support that is vital to local educational systems. *San Antonio School District*, at p. 36.

There is no precedent for restructuring local government units except where those governmental units have been either created or altered to effect an unconstitutional end. *Wright* v. *Rockefeller*, 376 U.S. 52 (1964); *Mahan* v. *Howell*, Nos. 71-6364, 71-373, 71-444, decided 21 February, 1973.

The proposed consolidation commands, as such a plan must, massive racially segregated busing, with the pupils selected on the basis of a draft lottery. Such segregated

busing would exacerbate racial differences rather than ameliorate them.

The consolidated system would transmute three school systems of optimum size into one huge, unwieldy, educationally undesirable system, with three separate tax bases, that would rank in size among the top 0.2% of all school systems in the United States.

The decree combining these three unitary school systems in order to effect a "viable racial mix" would create a precedent for dismantling all desegregated unitary systems that lacked a white majority. Where there are no contiguous school systems to provide white pupils to accomplish this result, there could be no judicial remedy, leaving such black majority school systems with this Court's stamp of inferiority. As this Court said in *Swann:*

"No fixed or even substantially fixed guidelines can be established as to how far a court can go, but it must be recognized that there are limits." (402 U.S. at 28) Clearly, the district court decree goes beyond these limits.

ARGUMENT

I.

There Is No Constitutional Violation That Affords Any Basis For The Restructuring Of Local Government Ordered By The District Court.

This Court made it abundantly clear in *Swann* v. *Board of Education*, 402 U.S. 1 (1971), that before the federal judiciary can intervene in local school affairs the existence of a constitutional violation must be established by way of predicate for its action.

> In seeking to define even in broad and general terms how far this remedial power extends it is important to remember that judicial powers may be exercised only

> on the basis of a constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults. (402 U.S. at 16.)

Neither the petitioners nor the trial court have demonstrated any predicate of constitutional violation on which the trial court's action can be rested.

A.

THERE IS NO DUAL SYSTEM TO BE ABATED BY JUDICIAL ACTION

The mandate of this Court to the lower federal courts has been clear: every dual school system must be converted into a unitary system to meet the requirements of *Brown* v. *Board of Education*, 347 U.S. 483 (1954), 349 U.S. 294 (1955), as explicated in *Green* v. *County School Board*, 391 U.S. 430 (1968), and in *Swann*, *supra*. As this Court said, in *Green*:

> It was such dual systems that 14 years ago *Brown I* held unconstitutional and a year later *Brown II* held must be abolished; school boards operating such school systems were *required* by *Brown II* "to effectuate a transition to a racially nondiscriminatory school system." 349 U.S., at 301. It is of course true that for the time immediately after *Brown II* the concern was with making an initial break in a long-established pattern of excluding Negro children from schools attended by white children. The principal focus was on obtaining for those Negro children courageous enough to break with tradition a place in the "white" schools. See, *e.g.*, *Cooper* v. *Aaron*, 358 U.S. 1. Under *Brown II* that immediate goal was only the first step, however. The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about: . . . (391 U.S. at 435-36.)

> It is against this background that 13 years after *Brown II* commanded the abolition of dual systems we must measure the effectiveness of respondent School Board's "freedom-of-choice" plan to achieve that end. . . . In the light of the command of that case, what is involved here is the question whether the Board has achieved the "racially nondiscriminatory school system" *Brown II* held must be effectuated in order to remedy the established unconstitutional deficiencies of its segregated system. . . . *Brown II* was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. . . . The constitutional rights of Negro school children articulated in *Brown I* permit no less than this; and it was to this end that *Brown II* commanded school boards to bend their efforts. (391 U.S. at 437-38.)

The deficiency in the New Kent County "freedom-of-choice" plan was that it did not convert a dual school system into a unitary school system. "Rather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board." (391 U.S. at 441-42.)

The emphasis on reform of "school systems" from dual to unitary and the emphasis on the obligation of the particular school board in charge of such a system was repeated in *Swann*.

The three distinct school systems involved in this case are no longer dual systems; each is a unitary system. Fur-

ther interference by federal district courts is neither warranted nor permitted. As this Court said in *Swann:*

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in *Brown I.* The systems would then be "unitary" in the sense required by our decisions in *Green* and *Alexander.*
>
> It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary. (402 U.S. at 31-32.)

There is no real quarrel that each of the three school systems is in fact "unitary." The Court of Appeals for the Fourth Circuit so held. (462 F.2d at 1061; Pet. A. 563a.) So far as Richmond is concerned, the trial court itself so held when it approved Plan III which is currently in effect in Richmond. The court had previously approved an alternative plan—the Foster Plan—for which Plan III was substituted. As to the Foster Plan, the District Court had said:

> The Court therefore concludes:
>
> 1. That compliance with the law of the land can be reasonably effected by the adoption of a reasonable degree of transportation.

2. That the plaintiffs' plan would, if adopted, create a unitary system.

3. That transportation is an acceptable tool in effectuating a unitary system of schools.

4. That while racial balance is not required in each and every school in the system, there is no intractible remnant of segregation in the City of Richmond school system since all parts of the city can be reached by virtue of reasonable amounts of transportation, both as to distances, times and sums involved.

The Court further finds that the adoption of a plan such as suggested by Dr. Foster may well not only create a unitary system, but do much toward the thwarting of resegregation of schools once the unitary system has been put into effect. (*Bradley* v. *School Board of City of Richmond, Va.*, 317 F.Supp. 555, 576 (E.D. Va., 1970).)

Of Plan III, formulated by the City of Richmond as a substitute for the Foster Plan which had been offered by the plaintiffs in the action, the trial court said:

. . . Because upon examination the Court cannot find that the Foster plan would result in a "more unitary" system at any level, the adoption of plan 3 can be approved. (*Bradley* v. *School Board of City of Richmond, Va.*, 325 F.Supp. 828, 844 (E.D. Va. 1971).)

. . . Although operation under either plan would fulfill the School Board's legal duty, it would be fully justified in prefering plan 3 on the basis of whatever administrative or educational reasons it finds persuasive. (*Id.* at 846.)

Nor is there any doubt that the Counties of Henrico and Chesterfield are in compliance with the constitutional requirements to establish unitary school systems in place of the dual school systems which they once administered. (See pp. 8-12, *supra*.)

Dr. Pettigrew so testified:

> Q . . . If you will exclude from your discussion the Matoaca Laboratory School about which there will be [C-114] some further discussion later, if you will exclude that, is there any black child in Richmond, Chesterfield, or Henrico, who is not in a desegregated school? A Any black child? In the sense of pure mix, simple mix?
>
> Q That is all I am talking about, Doctor, the terms that you used, desegregated? A Then black children are in—
>
> Q All are in desegregated schools? A Yes. (A. 321a-322a).

The uncontradicted evidence is plentiful that the counties of Henrico and Chesterfield were each in compliance with the requirements of the Constitution and HEW to create and maintain unitary school systems. The one point of exception taken went to the Matoaca Laboratory School geographically located in Chesterfield County.

The Matoaca Laboratory School, of which the petitioners would make so much, as evidence of the failure of Chesterfield to desegregate is an example of the Procrustean bed into which they would place the school boards of the nation. Matoaca Laboratory School is owned and operated as a part of the Virginia State College, a predominantly black college. There is no question that the Laboratory School is a superior education facility, used both as a laboratory for the teacher education program at the college and as an incentive to teachers with school-age children to join the faculty of the college. The students at the Laboratory School have always been selected by the college. Chesterfield County afforded incidental services to the school, such as transportation for students, and acted as a conduit for

ADA (average daily attendance) funds paid by the State to all public schools. Chesterfield County had no control or influence over the choice of students or the content of the educational program or the selection of faculty. After the trial judge brought the counties of Chesterfield and Henrico into the Richmond desegregation case, Chesterfield received a letter from HEW saying that the continuance of its assistance to Matoaca Laboratory School was inconsistent with the requirements of a unitary school system which Chesterfield was otherwise maintaining. Upon receipt of the HEW objection, the Chesterfield School Board informed Virginia State College that the county could no longer participate in the operation of the school and the connection was severed by mutual agreement (A. 1021a-1024a). That action satisfied the requirement of HEW.

It is thus patent that the three school systems of Richmond, Henrico, and Chesterfield were each in compliance with the constitutional requirement that they establish unitary systems. Indeed, as the plaintiffs-petitioners have put the matter in their brief:

> That brings us to the one major point on which the Court of Appeals and the District Court were thoroughly agreed: that, within the boundary lines of the three school divisions, nothing more can be done than has already been done to "achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *Davis*, 402 U.S., at 37. (Brief for Petitioners, in No. 72-550, at p. 66.)

Richmond and Chesterfield and Henrico are all in compliance with the constitutional mandate to each of the respective school systems to eliminate dual systems and establish unitary ones. Petitioners now seek to establish new standards and obligations beyond those commanded by the courts in order to establish a principle, not of de-

segregation of schools, but of racial balance, not merely within separate school systems but among them.

B.

THE THREE SCHOOL SYSTEMS ARE IN FULL COMPLIANCE WITH THE CONSTITUTIONAL MANDATE AND THERE IN NO CONSTITUTIONAL VIOLATION ON WHICH TO PREDICATE JUDICIAL REFORMULATION OF THE THREE UNITARY SCHOOL SSYTEMS.

In *Swann*, this Court said:

> If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole. (402 U.S. at 24.)

The consolidation plan approved by the district court commands not merely racial balance within a school system but among the schools of all three systems. Whatever rationalization is offered to support it, there can be no doubt that the deficiency to be cured, as seen by the petitioners and the trial court, is that the racial balance in Richmond schools is different from the racial balance in the schools of the adjacent counties. It is this racial imbalance that the petitioners seek to redress. The sole objective and effect of the plan is to impose the same racial balance on the school systems of Chesterfield, Henrico and Richmond—to make "every school" in each separate school system, "reflect the racial composition" of the three systems "as a whole." Because no justification exists for such action, under any decision of this Court, the petitioners have sought to invent

a new Constitutional violation and have offered a variety of arguments to support the objective, no one of which is adequate by itself and no combination of them is any better.

1. *The absence of a "viable racial mix" is not a Constitutional violation.* The totality of the argument offered in support of the Richmond consolidation plan at the trial—although based on evidence which the petitioners would now abandon, for good cause—rests on the proposition that a black majority school system, or any school system that has less than 20% or more than 40% blacks, is "segregated." There can be no question that this was the thesis on which the plan was offered by its proponents and embraced by the district court. The quotations set out above—only a small portion of those in the record—make this clear. (See pp. 18-31 *supra.*)

Even within a single school system which has attained unitary status, as Richmond and Chesterfield and Henrico have done, the requirement of attaining racial balance in all schools reflecting the racial balance within the system, would be invalid. Thus, this Court said in *Swann:*

> School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; *absent a finding of a constitutional violation, however, that would not be within the authority of a federal court.* As with any equity case, the nature of the violation determines the scope of the remedy. In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad

> power to fashion a remedy that will assure a unitary school system. (402 U.S. at 16.) (Emphasis added.)

Not only have the Richmond school authorities established a unitary system for the operation of the Richmond schools which is now in effect, Plan III, but the plaintiffs-petitioners had previously produced—and the trial court had approved —a unitary system, the Foster Plan, which would also have eliminated the dual school system within Richmond.

A fortiori, the Pettigrew thesis, as it has become known in the Fourth Circuit where Dr. Pettigrew has unsuccessfully peddled it for several years as a judicial tool is, as such, invalid interference with the school authorities' broad power to formulate and implement educational policy. As applied in this case, the thesis goes even beyond the notion of racial balancing within a school system. Here, the thesis would require reaching out to borrow for its purposes the children of adjacent school systems, and it would also require white majorities of not less than 60% nor more than 80% in all schools. The basis for the theory, as Dr. Carmichael, the Richmond School Board's witness, acknowledged, "is that in America we can't make a system work if it is majority black." (A. 412a)

The reasons why this notion of majority white student bodies—the kind that the consolidated school plan seeks to attain—is invalid were cogently stated by Judge Sobeloff in his concurring opinion in *Brunson* v. *Board of Trustees of School District No. 1 of Clarendon County, South Carolina*, 429 F.2d 820, 824, 826 (C.A. 4th, 1970):

> The linch-pin of the dissent is the notion that, ideally, the goal of desegregation should be to achieve an "optimal mix," consisting of a white majority. It suggests, as did Dr. Pettigrew in his testimony in *Brewer* v. *School Board of City of Norfolk* (434 F.2d 408) (4th

Cir. 1970), that desegregation should not go so far as to put whites in minority situations. In *Brewer* we gave short shrift to the Board "principles" fashioned largely from Dr. Pettigrew's testimony. Summary treatment is all it deserved.

* * *

Since the dissent has seen fit in this case to revive the spectre of the Pettigrew thesis, previously cast aside, I cannot let the matter pass without comment. This is no mere issue of expert testimony. It is no mere question of "sociology and educational theory." There have always been those who believed that segregation of the races in the schools was sound educational policy, but since *Brown* their reasoning has not been permitted to withstand the constitutional command. When the underpinnings of the white majority proposal are exposed, they seem to constitute a direct attack on the roots of the *Brown* decision. The minority's readiness even to entertain the idea reflects, I respectfully submit, a profound misunderstanding of the social and constitutional history of this nation and the Negro people.

* * *

The invidious nature of the Pettigrew thesis, advanced by the dissent in the present case, thus emerges. Its central proposition is that the value of a school depends on the characteristics of a majority of its students and superiority is related to whiteness, inferiority to blackness. Although the theory is couched in terms of "socio-economic class" and the necessity for the creation of a "middle-class milieu," nevertheless, at bottom, it rests on the generalization that, educationally speaking, white pupils are somehow better or more desirable than black pupils.

* * *

. . . But school segregation is forbidden simply because its perpetuation is a living insult to the black children and immeasurably taints the education they receive.

> This is the precise lesson of *Brown*. Were a court to adopt the Pettigrew rationale it would do explicitly what compulsory segregation laws did implicitly.

Certainly it behooves this Court not to put its imprimatur n what Judge Sobeloff so roundly and so rightly con-emned as a reversal of *Brown* and all that *Brown* stands or.

2. *Concentrations of blacks in cities and whites in sub-rbs is a national phenomenon which, of itself, cannot consti-ute a constitutional violation.* The weakness of the consti-utional argument for the creation of a "viable racial mix," e., white-majority schools, became patent to the petitioners y the time the trial ended. As a result, they have made very effort to suggest that the racial "imbalance" between he suburbs and the city of Richmond must be due to some ther form of constitutional violation. The argument from emography, like all of their arguments that have followed he abandonment of the advocacy of "viable racial mix," is rcular. Essentially, the argument boils down to the propo-tion that there is a disparity between the racial mix of the opulation within and without the city, therefore the dif-erence is a violation of the constitution. But there is no vidence in this record—and, indeed, there can be no evi-ence—to support the proposition that the racial imbalance etween city and suburbs resulted in any way from actions f the respondents. Without such a nexus, of course, there no showing of a constitutional violation on which to redicate the kind of "remedy" that the district court would npose here. The requirement of such a nexus was clearly ated by this Court in *Swann*, when it said: ". . . in the bsence of a showing that either the school authorities or me other agency of the State has deliberately attemped fix or alter demographic patterns to affect the racial

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composition of the schools, further intervention by a district court should not be necessary." (402 U.S. at 32).

a. The Richmond area demography. The fact of the matter is that the growth of suburbs with predominantly white populations and the increase in the proportion of black populations in the central cities is a nationwide phenomenon, totally independent of the area in which the city is located, totally independent of the history of segregation of schools. A simple glance at the Census Bureau statistics on Standard Metropolitan Statistical Areas (SMSAs) reveals the same racial disparities of the city-suburb populations in the North, East, and West as in the Southern States with segregationist histories. They also show that, if anything, the City of Richmond SMSA has experienced less movement toward central city black concentration and suburban white concentration than other SMSAs across the nation. It is impossible to predicate a constitutional violation on the basic fact of racial imbalance between the suburban communities and the central city community.

The data in the accompanying chart is taken from The Statistical Abstract of the U.S., prepared by the Bureau of the Census, U.S. Department of Commerce. These data are to be found in Section 33, pp. 838-39, 858-59, 878-79, of the commercially published edition of The Statistical Abstract which bears the title: *The American Almanac* and is published by Grosset & Dunlap. The Richmond SMSA ranks 65th in population among the SMSAs. The table contains the relevant statistics about the SMSAs that rank from 55th to 75th in population. The data in columns 1, 2 and 4 are taken directly from the Statistical Abstract; column 3 was secured simply by subtracting the white growth rate in the central cities in these SMSAs from the black growth rate in those same cities.

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1960-1970	SMSA 1	Central City 2			3	4	
	% SMSA Growth	% Growth Central City			Black > White % Growth	% Net In-Migration	
		W	B	Tot.		B	W
Allentown, Pa. (544,000)	10.4	—2.8	83.5	—1.5	86.3	(NA)	(NA)
Charlotte, N.C. (409,000)	29.2	15.3	30.3	19.7	15.0	5.9	1.9
Flint, Mich. (497,000)	19.3	—14.8	58.7	—1.8	73.5	10.2	—46.8
Fresno, Calif. (413,000)	12.9	19.1	68.4	23.9	47.3	5.4	9.8
Grand Rapids, Mich. (539,000)	16.7	7.1	59.9	11.5	52.8	4.1	—7.4
Greensboro, N.C. (604,000)	16.1	14.2	21.3	16.1	7.1	3.3	5.0
Harrisburg, Pa. (411,000)	10.5	—27.5	40.2	—14.6	67.7	(NA)	(NA)
Jacksonville, Fla. (529,000)	16.1	16.8	13.9	16.1	—2.9	—3.9	5.3
Jersey City, N.J. (609,000)	—0.2	—15.1	54.9	—5.6	70	7.1	—46.1
Knoxville, Tenn. (400,000)	8.8	66.9	9.0	56.1	—57.9	(Z)	48.9
Nashville, Tenn. (541,000)	16.7	11.1	16.1	12.1	5.0	2.4	—1.9
Omaha, Neb. (540,000)	18.0	12.8	39.8	15.2	27.0	2.6	—2.4
Orlando, Fla. (428,000)	34.4	3.1	42.5	12.3	39.4	3.3	—4.1
Salt Lake City, Utah (558,000)	24.5	—8.2	42.0	—7.2	50.2	(NA)	(NA)
Springfield, Mass. (530,000)	7.3	—6.3	63.2	—2.8	69.5	(NA)	(NA)
Tacoma, Wash. (411,000)	27.8	0.1	81.4	4.5	81.3	(NA)	(NA)
Tulsa, Okla. (477,000)	13.8	21.8	71.1	26.7	49.3	12.1	23.9
Wichita, Kan. (389,000)	17.3	5.7	39.9	8.6	34.2	1.7	—21.5
Wilmington, Del. (499,000)	20.5	—36.5	41.5	—16.1	78.0	5.0	—26.4
Youngstown, Ohio (536,000)	5.3	—15.6	15.9	—10.2	31.5	0.8	—39.0
Richmond (538,000)	**18.9**	**12.7**	**14.5**	**13.5**	**1.8**	**0.8**	**14.3**

(NA) = Not available (Z) = Less than 500 total

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These data reveal that, except for Jacksonville, Florida, and Knoxville, Tennessee, all 21 central cities have a substantially greater black growth rate than white growth rate. The highest disparities are in Allentown, Pa., Flint, Mich., Harrisburg, Pa., Springfield, Mass., Tacoma, Wash., and Wilmington, Del. For the most part, the differences in the growth rate are not attributable to migration. And, most important perhaps, both on an absolute and a comparative scale, the City of Richmond shows only a slight difference between the black and white growth rates: 14.5% black and 12.7% white and a large white in-migration, attributable largely to an annexation, 14.3%, and almost no black in-migration, 0.8%.

What is true of these SMSAs with populations between 389,000 and 609,000 is true of the SMSAs of the nation as a whole as another chart derived from the Census Bureau attests:

SUMMARY TOTALS FOR THE 66 SMSAs
(In thousands)

	Total SMSA	Central Cities	Ring
Total Population: 1970	110,909	53,550	57,359
White Population: 1970	93,915	39,817	54,093
Change: 1960 to 1970			
Number	9,927	—2,538	12,468
Percent	11.8	—6.0	30.0
Negro Population: 1970	15,064	12,487	3,577
Change: 1960 to 1970			
Number	4,149	3,390	762
Percent	38.0	37.3	42.0
Percent Negro:			
1970	13.6	23.3	6.5
1960	11.5	17.7	4.2

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The overall national trend that is reflected in these figures was conceded by petitioners' witnesses during the course of the trial. Mr. A. Howe Todd, Director of Planning and Community Development for the City of Richmond, the petitioners' expert on this matter testified:

> Q You have made a study of the census of the major metropolitan statistical areas for the United States in 1960 and 1970, haven't you? A I used it, yes, sir.
>
> Q Well, isn't the same thing happening all over the country to major cities as is happening to Richmond as to loss and gain of population? A I don't see any great difference. In fact, I said in my testimony that Richmond metropolitan area has the same problems and is growing and developing similarly to other metropolitan areas. (A. 173a)

Dr. Karl E. Taeuber, the petitioners' other major expert witness on demographic distribution, testified:

> Q Dr. Taeuber, did I understand you to testify that the racial distribution in the City of Richmond generally conforms to the pattern of racial distribution in all of the large cities of the United States without regard to what type of city it may be? A Yes. (A. 643a)

b. *Housing.* Nonetheless, petitioners assert that zoning practices, restrictive covenants, and housing regulations are the basis for the Richmond area racial imbalance between the city and the suburbs. But the facts of record are inconsistent with a demonstration of any such nexus.

On zoning, the petitioners' witness, Mr. Todd, testified that he could not "think of any zoning practices" in the areas around Richmond that had any "effect of containing black areas" or "encircling them" or "locking them off from

white areas of residence." (A. 168a) As to subdivision practices, of the five or six hundred plans filed each year, he could recall generally only "three or four times . . . in 20 years" that proposals were made to preclude access to new developments from black communities. (A. 169a) As a matter of fact, the only such practice that he specifically recalled "was in the 50's." (A. 168a) If anything, zoning practices encouraged movement from the city to the suburbs, as this same witness testified:

> Q Could you tell me, sir, whether the zoning laws in the City of Richmond with respect to residential development are more or less restrictive than the laws of Chesterfield County? A I haven't made a study of that, Mr. Gray. I am not sure I can answer. I understand Chesterfield has a recently developed new subdivision regulation which I haven't seen.
>
> Q Well, are you familiar with the old one? A Only in a very, very general way, yes, sir.
> I have seen what came in after annexation, and I did try to compare ours.
>
> Q Do you know generally whether they are more or less restrictive than Richmond? A I would say less restrictive. (A. 176a)

* * *

The plaintiffs' witness, Mr. Edward George Councill, III, the Executive Director of the Richmond Regional Planning District Commission, on direct examination, testified on the basis of a report offered to support petitioners' case:

> Q . . . Does that study have any opinion as to the administration of zoning ordinances in this area? A It has a major opinion.
>
> Q Tell us what that is. A It has found that in the jurisdiction which makes [F-36] up the standard metropolitan area, Richmond, Henrico, and Chester-

field and Hanover, no evidence to support discriminatory zoning practices whatsoever.

Q In all four jurisdictions? A All four jurisdictions studied. (A. 503a)

There is absolutely nothing in the record to contradict these conclusions. There is additional evidence to support them.

As to restrictive covenants, the evidence is equally clear that they in no way affected the racial balance between the city and suburban communities. The growth of the suburbs occurred, as Richmond's Exhibit 57a (Ex. A. 8e) reveals, after 1950. The case of *Shelley* v. *Kraemer*, 334 U.S. 1, was decided in 1948. Witnesses could recall not a single suit maintained on a restrictive covenant in Chesterfield or Henrico. (CX 19, Ex. A. 127e; HX 17, 18, Ex. A. 94e-95e) There is no evidence in the record to show in any way that any racial covenant was ever utilized as a means of preventing the movement of blacks into Chesterfield or Henrico or out of Richmond. The evidence relating to restrictive covenants challenges actions of the national government, not state or local governments. Indeed, the sole evidence suggesting that any governmental policy or action made any contribution to the racial imbalance of suburbs and central cities is evidence of the failure of the national government to implement the decision in *Shelley* v. *Kraemer*.

Dr. Pettigrew testified that the responsibility for racial segregation in housing was attributable not to state or local governments but to the deficiencies of national policy:

A . . . the chief reason why we have housing segregation in the United States by race is federal policy. Federal policies from the initial housing act in 1935 are what basically segregated by race. There are other things that contributed to it, to be sure, including racial

discrimination and so forth in the real estate industry, but we need to change federal policy.

. . . The federal government, in effect, gave lower interest terms if you built, if whites built a home in the suburbs. They discriminated, the Veterans Administration and FHA did against, as has been demonstrated, not just my opinion, against blacks doing the same thing. They discriminated fully against whites for mortgages for central city homes by having higher interest rates. (A. 365a)

The sole testimony relating to local interference with suggested housing desegregation goes to the point that Richmond was unable to construct low-cost housing either within the city or in the adjoining counties. So far as Chesterfield is concerned the testimony is only that Chesterfield was not asked to allow Richmond to build low-cost housing in Chesterfield, allegedly because the county officials had indicated a distaste for low-cost housing (A. 617a). Henrico was never asked at all (A. 626a). But, even so, the petitioners' expert who presented the evidence on this subject admitted that the problem of "low-cost housing" was basically one of "class discrimination" rather than racial discrimination. Plaintiffs' witness, Frederic Fay testified:

Q Well, have you had any difficulty in purchasing sites that weren't located within the City of Richmond?
A Oh, yes, we always have difficulty in attempting to find sites even within the present City.

In other words, when you get out of the core area that is primarily occupied by the black people of the community, or is in transition, you have difficulty in acquiring site locations for these projects inside the City as well as outside. We have difficulty in finding sites even in completely black areas. Everyone thinks the [H-172] low rent housing program is a good one until it begins to touch their neighborhood. Then we find that class discrimination takes over and is perhaps

even more prevalent and vicious than racial discrimination. (A. 619a)

There was no evidence to contradict this fact about the lmost universal objection to low-cost housing installations. 'he people of central cities, no less than those of the subrbs, blacks no less than whites, do not want those projects ithin their immediate neighborhoods. That hardly adds p to a constitutional violation by the respondents on which predicate a school desegregation decree.

This Court held, in *James* v. *Valtierra*, 402 U.S. 137 1971), that one cannot equate the right to public housing ith the right to open housing.

> The people of California have also decided by their own vote to require referendum approval of low-rent public housing projects. This procedure ensures that all the people of a community will have a voice in a decision which may lead to large expenditures of local governmental funds for increased public services and to lower tax revenues. It gives them a voice in decisions that will affect the future development of their own community. This procedure for democratic decisionmaking does not violate the constitutional command that no State shall deny to any person "the equal protection of the laws." (402 U.S. at 142-43.)

f course, the state could not so condition the requirement r open housing. See *Hunter* v. *Erickson*, 393 U.S. 385 1969). Nor did the dissent in *James* v. *Valtierra* suggest e equation between public housing and housing for blacks, y more than did the majority.

What the petitioners have tried to assert is that there is mething attributable to local government activities in e Richmond area that causes blacks not to move to the burbs. But as their own expert testified:

> Q Dr. Taeuber, the last answer that you gave Mr. Lucas with regard to blacks moving into the periphery of the general area with which they have been previously contained, is this tendency to move into the periphery area, is this a national tendency? A Yes. This is what was examined in great detail in those ten cities that I mentioned earlier.
>
> [I-66] Q And this is characteristic of what happens all over the United States and not just what happens in Richmond? A That is correct.
>
> Q And what is happening in Richmond in this respect is similar to what is happening in every other standard metropolitan statistical area? A That is essentially correct. (A. 667a)

In short, there is absolutely nothing in the record to support the proposition that the demographic distribution in the Richmond SMSA, the racial imbalance between the city and suburbs, can in any way be attributed to actions by the respondents in this case.[15] In the absence of such evidence, there is clearly no constitutional violation to be found in the current discrepancies between white and black population on which to base a decree commanding the consolidation of three unitary school systems into one system assuring substantial white majorities in every school. Moreover, as this Court has said, even if racial concentration in housing exists, a judicially created school plan may not be used as a vehicle for curing this condition (*Swann*, 402 U.S. at 23):

> Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even

[15] So far as the question of propriety of school siting is concerned, see pp. 83-84, *infra*.

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when those problems contribute to disproportionate racial concentrations in some schools.

C. *Community of Interest.* It should be noted that to the extent that the City of Richmond takes seriously the notion that a single community of interest in Richmond and the adjacent counties gives rise to a constitutional requirement that the educational systems of the three local governments be combined, there are provisions of State law to cure the deficiencies alleged.

The State, exercising the power to define for "legitimate state purposes" the boundaries of its political subdivisions and the governmental functions to be delegated to each, has recognized the possibility of changing demography and changes in the communities of interest and has provided judicial machinery for making appropriate boundary adjustments.

> In Virginia, cities and counties are mutually exclusive. The area embraced within a city's limits is not a part of a county. Cities expand at the expense of the territory of an adjacent county, and Virginia has provided a judicial procedure as the means for extending the limits of cities. (*Holt* v. *City of Richmond*, 459 F.2d 1093, 1094 (4th Cir. 1972)

Indeed, as previously noted, Richmond has used that procedure time and again to expand its boundaries at the expense of each of the counties here involved. As recently as January 1, 1970, the boundary between it and Chesterfield has been judicially established after a long and tortuous review of all aspects of the existing community of interest.

It is true that the State has imposed a temporary moratorium on compulsory annexation while the legislature reviews the existing procedures for boundary change and

city-county relations but that moratorium expires shortly by its own terms. Moreover, as applied to Richmond and more particularly the class of black plaintiffs that now seeks joinder of the three school systems to secure a white majority student body in every school, members of that class have imposed a more difficult obstacle not merely to future annexation but even to the 1970 annexation. That class, while seeking to join the three school systems in order to secure a white majority in the classrooms is opposed to joining with the white parents of those children in a single municipality because it would dilute the power that black citizens might assert over the government of the City of Richmond. On the other hand, the City of Richmond was found, by the district court that rendered the judgment in this case, to favor an annexation of part of Chesterfield—not all of Chesterfield and Henrico—in order to assure white hegemony in the City of Richmond. See *Holt* v. *City of Richmond*, 334 F.Supp. 228, 236 (E.D. Va. 1971), rev'd 459 F.2d 1093 (4th Cir. 1972). Thus, the community of interest in sewers, hospitals, shopping centers, roads, etc., on which petitioners seek to predicate the proposition that there is a constitutional mandate to consolidate the three school systems, is obviously thought not sufficient to cause the same petitioner to join in accepting the fruits of a statutory remedy to bring together that which they have labeled a single community. We respectfully submit that the data on the so-called community of interest between the City of Richmond and Chesterfield and Henrico counties do not afford a constitutional base for restructuring these three governments piece-meal. Nothing in the record can sustain the existence of the constitutional violation required by this Court in *Swann:* "that either school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, . . ." 402 U.S. at 32.

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3. *History does not afford a constitutional violation on which to base the reconstruction of the three unitary school systems into a single racially-balanced system.* Very large portions of the trial Court's opinion and petitioners' briefs are devoted to the proposition, not that the respondents are now engaging in any wrongdoing, committing any "constitutional violation," but rather that sometime in the past they have engaged in activities that approved, encouraged, or effected unconstituional school segregation. There is, of course, no contest to be made over this aspect of Virginia's history, beginning with its membership in the Confederacy during the Civil War. But that history cannot warrant the action of the district court here.

There are three reasons why petitioners' parade of horribles should not afford a predicate for imposing a white-majority requirement on the school children of the City of Richmond and the Counties of Henrico and Chesterfield. First, that history is not reflective of the Commonwealth of Virginia of today and the time that the trial below occurred. Second, because historically the very evil to be abated was that contained in the proposed plan of consolidation, a plan constitutionally suspect, if not plainly invalid, under the very provisions of the Constitution of the United States on which petitioners purport to rely. Third, because such history, by itself, has never afforded the basis for relief even in the earlier days of misbehavior.

a. *Desegregation in Virginia.* By the time of the trial of this case, each school division in the Commonwealth was operating under HEW or Court approved desegregation plans.

The success of Virginia's integration efforts is even more dramatically underscored when compared with the national averages. In 1968, 29.8% of Virginia's black stu-

dents attended schools which were at least 20% white. In 1968, 32% of the Nation's black students attended schools which were at least 20% white. In 1970, 69.8% of Virginia's black students attended schools which were at least 20% white. In 1970, only 50.6%, or 19 points fewer than Virginia's average, of the Nation's black students attended schools at least 20% white. Over the two year period, Virginia, starting with a comparable base, was able to achieve an improvement of 40 points while the national increase was only 18 points. Recent figures show that for the 1971-72 school year, Virginia continued to outdistance the nation, for in Virginia 88% of the black students now attend schools at least 20% white while HEW estimates that in the continental United States only 54% of the black students attend schools at least 20% white. (A. 709a; HX 39).

The culmination of Virginia's repudiation of "massive resistance" is demonstrated not only in the foregoing factual statistics, it is perhaps best shown in the attitudes of Virginia's people. The Commonwealth has now written the guarantees of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States into the organic law of Virginia by adopting Section 11 of Article I of the Constitution of 1971, which provides:

> . . . the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged. . . .

This constitutional provision is an affirmative declaration of racial equality as the fundamental law of the Commonwealth of Virginia against which no governmental statute, policy, or practice to the contrary can prevail.[16] The

[16] Virginia's dedication to the concept is attested by the enactment, in 1972 and the strengthening in 1973, of the Virginia Fair Housing Law which parallels the federal statutes. (Va. Code §§ 36-86 et seq.)

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position advocated by the State and County defendants fulfills the guarantees of the Constitution for, unlike the City of Richmond, the State and County defendants do not seek to relegate their black citizens to another generation of inferior status by chaining them to a school attendance plan designed to insure that the black color of their skin will forever prohibit them from gaining a majority in a single school much less an entire school division. See *Brunson* v. *Board of Trustees of School District No. 1 of Clarendon County*, 429 F.2d 820 (4th Cir. 1970) (Sobeloff, J., concurring).

b. *Black majorities as intrinsically invalid.* The history on which petitioners would now premise their right to relief is a history that embraced rather than rejected the petitioners' essential argument that black majority schools are intrinsically inferior to white majority schools. It is a history on which Virginia has turned its back and which petitioners would once more revive. As counsel for the N.A.A.C.P. argued in the *Brown* cases, in 1955, segregationist states could condone the insertion of minorities of blacks in white schools; what they could not tolerate was the possibility of white students in majority-black schools. The N.A.A.C.P. counsel made the point this way in his oral argument before the Court on the question of appropriate relief:

> As to what runs through all of these arguments of the states, if I remember correctly, practically every Attorney General who appeared before this Court and those representing the Attorney General either began or some time in the argument said there was no race prejudice involved, there was no racial hatred involved, there was no bitterness involved.
>
> And then I think you can take the balance of each

argument made by the State Attorneys General and find out whether or not that is true.

Most if not all of them said that it was all right, there were very few Negroes involved like in Arkansas, that it is possible they could be integrated, that there might not be friction.

And then they said "However, where there are a large number of Negroes involved and only a small number of white people involved, that is the most horrible situation."

So on the one hand they say that where the majority, the big majority are white, a very small minority is Negro, you can do it, that is the most feasible, the nicest problem.

And the other is the reverse; well, the only way to understand that is that in one category you have a small number of white students, and the only difference between the two is Negro and white, and if that is not race I don't know what race is.

And that is the argument that is made throughout these cases. (Friedman, ed., *Argument: The Oral Argument before the Supreme Court in Brown v. Board of Education of Topeka, 1952-55*, p. 524 (1969))

Certainly there is irony in the fact that it is the N.A.A.C.P. that now fosters the argument that it once attributed to the states as the epitome of racial segregation, of Negro degradation, namely that black majority schools are intrinsically inferior.

The unconstitutional evil to be abated by the school desegregation cases was the label of inferiority imposed on blacks, the classification by law of blacks as improper classmates for whites, the notion that schools with black majorities by definition are inherently inadequate schools. The proposal of the petitioners here is, in fact, that this unconstitutional standard now be constitutionalized. The petitioners have adopted what Professor Jencks described thus: "The 'liberal' alternative, which is widely viewed as

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road to racial equality, seems to be compulsory busing blacks to white neighborhoods, and vice versa. This ies that black parents cannot send their children to all-k schools, even if they want to, because all-black schools *by definition* inferior. This position strikes us as both st and politically unworkable over the long haul." cks, *Inequality: A Reassessment of the Effect of Fam-nd Schooling in America*, 40-41 (1972))

was this "liberal alternative" proffered by the peti-ers that was rejected by the black parents of Atlanta, rgia, in their school desegregation case, with the some-approval of Mr. Roy Wilkins, the executive director .A.A.C.P., who said: "Our general position has beea t] there is no sacrifice of racial pride or loss of edu-n if blacks go to schools with blacks. If the school d agrees to the improvement in education and a pro-n that leads to meaningful equalization of the educa-l process, black children will not suffer by attending l-black school." (*Washington Post*, February 28, 1973, 25.)

should be noted that here, unlike the Atlanta situation, ssue is not the maintenance of all-black schools within hool system, but the maintenance of a unitary school em with a majority of black students in each school in the system. It should be noted that here, unlike the nta situation, there is no suggestion by petitioners that Richmond schools are in any way, shape, or form, in-r to the schools of Chesterfield and Henrico, except that former has a black majority student body and the latter white majority student bodies.

the history of school segregation speaks to any con-on, it speaks to the need for this Court to reject a titutional proclamation that a black majority school m adjacent to a white majority school system consti-

tutes "invidious discrimination" against the black school children attending the majority-black schools. That would, indeed, be turning back the clock.

c. *Irrelevance of history after a unitary system is effected.* Finally, a history of segregation in a State becomes irrelavant once a school system has achieved unitary status. This Court specifically so held in *Swann:*

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in *Brown I* [to eliminate the maintenance of "two sets of schools in a single school system deliberately operated to carry out a governmental policy to separate pupils in schools solely on the basis of race (402 U.S. at 5-6)]. The systems would then be "unitary" in the sense required by our decisions in *Green* and *Alexander.*
>
> It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary. (402 U.S. at 31-32.)

Clearly this is a rejection of petitioners' basic proposition that a past of segregation is all that a district court needs as justification to go beyond dismantling a dual system, and establishing a unitary system, *i.e.,* to require the

balancing of the white:black ratios within three adjoining school systems, preferably in a ratio approximately 7:3 in every school.

4. *Even if the State Board had the power to consolidate the three systems, its failure to do so did not violate the Constitution so as to afford a predicate for the trial court's plan.* Still one more argument offering a predicate of constitutional violation is again circular. In essence it is the proposition that the district court can compel the reorganization of the school systems of Richmond, Henrico, and Chesterfield to effectuate a racial balance among them because the State Board of Education and the local boards could have done so voluntarily but have failed to do so. It should be sufficient to answer that since there was no constitutional compunction on the respondents to achieve a racial balance among the three school systems, their failure to do so can hardly provide constitutional authority for the district court to compel them to do so.

a. *State Board's lack of authority.* Essentially, the petitioners' proposition is that the State Board of Education had the power to compel consolidation of the three school systems—thereby effecting a racial balance among them—and, therefore, it had to do so. The premise is in error because the State Board of Education has never had the authority to compel consolidation of school systems. The law on this subject is, perhaps, best expounded by the Court of Appeals for the Fourth Circuit, because of its particular expertise in the law of Virginia:

> Section 133 of the 1902 Constitution of Virigina provided that "the supervision of the schools in each county or city shall be vested in a school board." But school boards, per se, including a court-ordered consolidated school board, are not authorized by law to

raise funds for the schools. Instead, under Virginia law, a school board is fiscally dependent upon the local governing body, *e.g.*, county commissioners or city council, and have no authority whatever to levy taxes or appropriate funds for school purposes.

Although it is true that under Section 132 of the 1902 constitution the State Board of Education can designate two or more counties or counties and cities as a single school division, and has done so on 28 occasions, Section 133 of the constitution contemplates that even after such "consolidation" the separate school boards of the combined units are to continue to function.

In 1954 the General Assembly of Virginia enacted Virginia Code 22-100.1 et seq. Under these statutes a multi-unit school district with a single school board could be established, but only by the majority vote of the school board of each affected county and/or city and with the approval of the governing body of each affected unit and the approval of the State Board of Education. Such a school division has never been established in Virginia. Prior to the order entered in this case on January 10, 1972, neither the school boards of Richmond, Henrico or Chesterfield nor any of the governing bodies of these units ever requested the State Board to take such action.

Under the new Constitution of Virginia the State Board is given power to divide the Commonwealth into school divisions subject to "such criteria and conditions as the General Assembly may prescribe. At its extra session of 1971, the General Assembly enacted into law Virginia Code § 22-30:

> (1) No school division shall be composed of more than one county or city.
>
> (2) No school division shall be composed of a county or city and any one of the following towns: Abingdon, Cape Charles, Colonial Beach, Fries, Poquoson, Saltville, or West Point.

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> Notwithstanding any of the above criteria and conditions, the Board of Education may, upon the request of the school boards of the counties, cities, and towns affected, concurred in by the governing bodies thereof, consolidate or otherwise alter school divisions.
>
> Thus neither under the old constitution and statutes in effect prior to July 1, 1971, nor under the new constitution and statutes in effect after that date, could the State Board of Education, acting alone, have effected the consolidation of the school systems of Richmond, Henrico and Chesterfield into a single system under the control of a single school board. (462 F.2d at 1067; Pet. A. 577a-578a.)

It is thus apparent that the State Board was not authorized, much less charged with a duty, to consolidate these school systems.

The only reasons offered in support of petitioners' argument that the State Board should have compelled consolidation, even though it had no authority to do so, were: (1) without the consolidation, there was and would be "white flight" from the city to the suburbs; (2) the siting of schools, for which the local school boards had responsibility, subject to approval of the State Board, was not accomplished in a manner to contribute to better racial balance among the three communities.

b. *White flight.* The "white flight" argument is purely speculative and unsupported by fact. The record is clear that there has been no "white flight" from Richmond to the suburbs despite the increasing proportion of black students in Richmond, either (1) in the decade before Plan III went into effect, (2) in the year before Plan III went into effect, or (3) in the years during whch Plan III has been in effect. Thus, despite the nationwide movement to the

suburbs already discussed (See pp. 61-62, *supra*), of the 34,000 pupils registered in Henrico County Schools for the school year 1970-71, only 2,035 (5.9%) had transferred from Richmond City Schools during the preceding decade, and 532 of them were black students. Of the 2,500 pupils listed as "missing" from the Richmond schools for the 1970-71 school year, only 145 enrolled in Henrico schools, of whom 30 were black students. (A. 984; HX 30) Of the 20,676 Chesterfield school children enrolled in 1970-71, only 1,335 transferred from the Richmond schools during the preceding 12 years. Of this number 1,299 were white and 36 were black. Only 6.46% of the Chesterfield school population came from Richmond schools. (CX 34) There was a 3,703 decrease in Richmond enrollment in 1971-72, but these students obviously did not move to Henrico, which itself had a loss of 300 students, or to Chesterfield, which also lost 208 students. (RX 98; HX 40, CX 41, A. 155a-161a; A. 163a). In 1972-73, there were 859 students who transferred from Richmond schools to the suburban schools, of whom 286 (33.3%) were black. At the same time there were 309 students who transferred from the suburban schools to the Richmond schools, of whom 98 (31.7%) were black. The Chesterfield schools have maintained a 9% black student body during the three-year period of Richmond school desegregation; the Henrico schools have moved from an 8% black ratio to a 10% black ratio during the same three-year Richmond school desegregation period.[17] These data hardly reflect a "white flight" of school students to the suburban schools from the Richmond schools.

In any event, there is no demonstration that there is any cause and effect shown between the desegregation of the

[17] These post-trial data are taken from official reports to HEW by the school boards, filed with the State Board of Education.

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Richmond schools—on the basis of which "white flight" is predicated—and the movement to the suburbs. As Norman Chachkin of the NAACP Legal Defense and Education Fund, who argued the cause for the NAACP below, told the National Association of Teacher Attorneys, in Phoenix, Arizona on November 4, 1971:

> The quest for school desegregation, on the other hand, has always involved both urban and rural areas. What is perhaps most curious is that the impetus for school desegregation coincided with a period of fantastic suburban growth and change in the demographic characteristics of our cities. Many people have associated the two phenomena together and presumed a cause-and-effect relationship which does not exist. In other words, efforts at desegregation (whether voluntary or mandatory) have been blamed for the exodus of the white middle class from many cities. The truth of the matter is that the process of suburbanization preceded and may well outlast the issue of desegregation.

c. *School siting.* On the issue of school siting, the facts leave no doubt about the absence of merit in the petitioners' charge that they were placed for purposes of preventing desegregation. Aside from the empty allegations of the petitioners that the respondent counties and the State Board of Education[18] failed to discourage the nationwide phenomenon of white population growth in the suburbs and black population growth in the cities, there was no suggestion whatsoever of how that could or should have been done. Nor could there have been. The schools were patently

[18] The sole authority asserted by the State Board with regard to school sites was to assure that the *size* of the site was adequate to the needs of the proposed school. See State Board Regs., *School Plant Planning and Contruction*, Regs. 10.411, 10.412, 10.413 (SX 4). *School Board of Carroll County* v. *Shockley*, 160 Va. 405; *Howard* v. *County School Board*, 203 Va. 55.

constructed by the three local school boards to provide for the school children in their respective jurisdictions for whom they were responsible and in response to overcrowding of existing schools by the population explosions. Population growth was the cause of, not the response to, school construction. There is nothing in the record to contradict the facts attested by respondents' witnesses in this regard.

In Henrico, there were 31 new schools and 36 school additions built between 1954 and 1971. They were all built "to take care of new homes and to relieve overcrowded conditions in school that might be around it." (A. 981a) Most of them were filled or overcrowded on the day that they opened. (A. 979a-980a) In Chesterfield, there were 33 new schools built in the last 20 years, some of which were in an area later annexed by Richmond. (A. 1000a) All the facilities were "close to being full at the time of opening." (A. 1000a) How and why these counties should have responded differently to the population pressures that caused the siting of their schools must remain a mystery, for the record is—necessarily—barren of any indication of segregational motive or effect in the construction of these facilities.

5. *Failure of respondents to offer an alternative plan of consolidation is not a conditional violation on which to predicate the validity of the plan imposed.* Equally unfounded is the penultimate argument afforded by the petitioners in lieu of a constitutional violation on which to base a right to the judicial decree compelling consolidation of the three school systems. The proposition offered is that the plan approved by the trial court was valid because the respondents failed to afford any alternative plan that would utilize assignment of the students of the three systems to effect a racial balance among them. But there was no reason to proffer such a proposal. The three school systems were each unitary systems meeting fully the requirements es-

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ablished by this Court under the Fourteenth Amendment nd the Department of Health, Education and Welfare nder the Civil Rights Act of 1964. Plans to compel effectuation of a racial balance among the three school systems—which is what petitioners now demand of the respondents—would be at least constitutionally suspect. Could the three school boards have joined for the avowed purpose of assuring—as the trial court's plan would do—that there be no schools with black majorities? Would not such state action fall afoul the Fourteenth Amendment if challenged by black plaintiffs on the grounds of racial discrimination?

Moreover to repeat what this Court said in *Swann:*

> School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; *absent a finding* of a constitutional violation, however, that would not be within the authority of a federal court. (402 U.S. at 16.) (Emphasis supplied.)

t is not possible to read this proposition, as petitioners ead it, to mean that the constitutional violation—the predicate for judicial cognizance of the question—is the failure f the school authorities to do that which this Court has aid is not constitutionally required.

6. *The proximity of majority-black schools to majority-hite schools does not afford a constitutional violation on hich to predicate the consolidation plan.* Petitioners make ne other argument in their vain search for a constitutional iolation on which to predicate the judicial action taken y the trial court. Like all their arguments it boils down

to the simple proposition that there must be racial balancing among contiguous school districts, as well as within each, where one of the systems has a majority-black school population and another has a majority-white school population. This time the argument is that black school children attending majority-black schools will necessarily feel inferior if there are white-majority schools nearby. This is to say either that majority-black schools are, in fact, inferior or that the black children attending them must believe them to be so. If such a proposition were to be adopted by this Court, it would have to endorse what it has heretofore rejected: an obligation to balance schools within a system as well as among systems, for surely the allegedly harmful effect would more likely occur where the schools of different composition were within the same system. As this Court stated in *Swann*:

> . . . If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole. (402 U.S. at 24)

The Constitution precludes the separation of the races by governmental action, because of the constitutional principle that blacks and whites are equal before the law. Surely this Court will not undermine that principle by judicial declaration of the inferiority of black majority schools. It should not lend judicial support to a belief in the inferiority of black-majority schools. For it must recognize the adverse effect that such a ruling would have on students in black-majority school systems that are not contiguous to white-majority schools systems.

C. *Conclusion.* The "constitutional violation"—the necessary predicate for the trial court's intervention—has been offered by petitioners in the form of: 1) the need for a "viable racial mix"; 2) the demographic makeup of the three school systems and the political subdivisions in which they are located, without "a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools" (402 U.S. at 32); 3) an evil past of segregation in Virginia's history, without any nexus between such earlier misbehavior, since reformed, and the absence of racial balance between the city and the suburbs that the trial court sought to abate here; 4) the failure of the respondents to consolidate the three school systems to effect a racial balance among them; 5) the failure of respondents to have proffered a consolidation plan to the district court, and 6) the proximity of majority black schools to majority white schools, is, *per se*, a constitutional violation.

We respectfully submit that none of these propositions affords any constitutional violation that would justify the effectuation of the white-majority school concept embodied in the trial court's judgment in this case.

II

Factors To Be Weighed In Determining The Validity Of The District Court's Remedy.

"As with any equity case the nature of the violation determines the scope of the remedy." (*Swann*, 402 U.S. at 16.) It is difficult, therefore, to speak to the propriety of a remedy for a nonexistent violation. For, as this Court said in *Wright* v. *Council of City of Emporia*, 407 U.S. 451, 464 (1972):

> We need not and do not hold that this disparity in the racial composition of the two systems would be a sufficient reason, standing alone, to enjoin the creation of the separate school district. The fact that a school board's desegregation plan leaves some disparity in racial balance among various schools in the system does not alone make that plan unacceptable. We observed in *Swann, supra,* that "[t]he constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." 402 U.S. at 24.

Note that "racial imbalance" among schools even within a single system does not by itself warrant judicial action. If an injunction would be improper for the purpose of preventing the disjointing of a single school system to avoid racial imbalance, how much less justified must it be for the purpose of combining separate school systems to that end.

The four dissenting Justices in *Emporia* were fully in agreement that "racial balance," which they found to be the essence of the question, did not justify judicial interference with the creation of a separate school division.

> It is quite true that the racial ratios of the two school systems would differ, but the elimination of such disparities is not the mission of desegregation. We stated in *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S., at 24:
>
> > "If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole."

It can no more be said that racial balance is the norm be sought, than it can be said that mere racial imalance was the condition requiring a judicial remedy. 407 U.S. at 473.)

* * *

If the severance of the two systems were permitted proceed, the assignment of children to schools would epend solely on their residence. County residents would tend county schools, and city residents would attend ty schools. Assignment to schools would in no sense epend on race. Such a geographic assignment pattern prima facie consistent with the Equal Protection lause. See *Spencer* v. *Kugler*, 326 F.Supp. 1235 (N.J. 971), aff'd, 404 U.S. 1027 (1972). (407 U.S. at 71-72.)

at the Court held in *Emporia* was that there must be onal contributing factors as a predicate for judicial factors other than mere racial imbalance.

White Flight." In *Emporia*, the Court found three actors, none of which is present here. The first of factors in *Emporia* was the evidence accepted by the that there would be white flight from the part of the having the larger proportion of black students to wly created city system. "Thus, in the judgment of strict Court, the statistical breakdown of the 1969- nrollment figures between city residents and county nts did not reflect what the situation would have been mporia established its own school system." (407 U.S. 65.) As we have previously shown, pp. 81-82 *supra*, not have to rely on surmise as to what would happen n the separate school systems here involved. The the matter is that the separation of the City of ond from the Counties of Henrico and Chesterfield isted since 1871. There have been three years of

actual experience under judicial decree desegregating the Richmond school system. The evidence is clear, as the Court of Appeals stated, that there has been no white flight from Richmond to the county schools of the kind that the Court anticipated in *Emporia*. (462 F.2d at 1065; Pet. A. 572a-573a) And there is no evidence of what "white flight" would occur from the proposed consolidated system with its necessarily extensive busing.

B. *Differences in School Quality.* "White flight" was only one of the factors that weighed against the propriety of the severance of the single school system into two school systems as contemplated by the City in *Emporia*. The second factor that was held relevant was the distinction between the quality of the schools that would be located in the two systems. "The record further reflects that the school buildings in Emporia are better equipped and are located on better sites than are those in the county. We noted in *Swann* that factors such as these may in themselves indicate that enforced racial segregation has been perpetuated." (407 U.S. at 465) There is no evidence in this record however, and there could be none, that the schools of Richmond are in any way inferior to those of the adjacent county school systems. So too, the second factor that militated against allowing the withdrawal of the city schools from the unitary school system is absent here.

C. *"Timing."* The third factor that made for the Court's conclusion that the single unitary system could not be broken down into two systems was the element of "timing":

> . . . While Emporia had long had the right under state law to establish a separate school system, its decision to do so came only upon the basis of—and, as the city officials conceded, in reaction to—a court order that prevented the county system from maintaining any

longer the segregated system that had lingered for 15 years after *Brown I*. (407 U.S. at 465.)

timing factor here also weighs against the redrawing school system lines. For, here the Richmond school em, which long had the right to offer a plan of desegre- on of its schools, did not offer this one for consolidation the county school systems until after the district court imposed upon the Richmond school system a unitary em in lieu of the dual system that had existed until the of the Foster Plan and Plan III. Not until there was itary system in Richmond was there any suggestion, by er plaintiffs or Richmond that there was a need for olidation, just as the effor' to dismember the system in *poria* did not come until after an order effecting a unitary em.

is clear that the reasons for denying the separation of and county into two school systems in *Emporia*, for pelling them to remain as a single unitary system, are er not present here or weigh in favor of the maintenance he three unitary systems already in existence in the e political subdivisions. There is no disparity between quality of the three school systems now existing; there idence here that "white flight" to the county schools is xistent; Richmond's "timing" for the consolidation plan es it clear that its purpose and effect was to avoid the tuation of a unitary system that would provide black rities within the desegregated schools of Richmond.

the same time, the factors that were considered to ate against the separation of the county and city schools *mporia* must weigh even more heavily in favor of per- ng the counties here to maintain their own school ms, just as they have done since 1871. Emporia was not ty of the second class" until 1967, two years after the

desegregation suit began. It had never run its own school system. "Both before and after it became a city, Emporia educated its children in the county schools." 407 U.S. at 459. The reason that it became a city was that it was "apparently dissatisfied with the county's allocation of revenues from the newly enacted states sales tax." 407 U.S. at 454.

D. *Local Control.* Both the majority and minority of the Court recognized Emporia's interest in control over its proposed, nonexistent school system. As this Court said only the other day, in *San Antonio School District* v. *Rodriguez,* No. 71-1332, decided 21 March 1973, slip opinion, pp. 45-46:

> . . . The merit of local control was recognized last Term in both the majority and dissenting opinions in *Wright* v. *Council of the City of Emporia,* 407 U.S. 451 (1972). MR. JUSTICE STEWART stated there that "[d]irect control over decisions vitally affecting the education of one's children is a need that is strongly felt in our society." *Id.,* at 469. THE CHIEF JUSTICE, in his dissent, agreed that "[l]ocal control is not only vital to continued public support of the schools, but it is of overriding importance from an educational standpoint as well." *Id.,* at 478.
>
> The persistence of attachment to government at the lowest level where education is concerned reflects the depth of commitment of its supporters. In part, local control means, as Professor Coleman suggests, the freedom to devote more money to the education of one's children. Equally important, however, is the opportunity it offers for participation in the decision-making process that determines how these local tax dollars will be spent. Each locality is free to tailor local programs to local needs. Pluralism also affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence. An analogy to the Nation-State relationship in our federal system seems uniquely appropriate. Mr. Justice Brandeis identified as one of

the peculiar strengths of our form of government each State's freedom to "serve as a laboratory . . . and try novel social and economic experiments." No area of social concern stands to profit more from a multiplicity of viewpoints and from a diversity of approaches than does public education.

The respective municipal governments of Richmond, esterfield, and Henrico have always—since the creation public school systems—had "control over decisions vitally ecting the education of [their] children . . . a need that is ongly felt in our society."

For the dissenters in *Emporia*, the concept of local con- l of schools weighed even more heavily than it did for majority:

> This limitation on the discretion of the district courts involves more than polite deference to the role of local governments. Local control is not only vital to continued public support of the schools, but it is of overriding importance from an educational standpoint as well. The success of any school system depends on a vast range of factors that lie beyond the competence and power of the courts. Curricular decisions, the structuring of grade levels, the planning of extra-curricular activities, to mention a few, are matters lying solely within the province of school officials, who maintain a day-to-day supervision that a judge cannot. A plan devised by school officials is apt to be attuned to these highly relevant educational goals; a plan deemed preferable in the abstract by a judge might well overlook and thus undermine these primary concerns. (407 U.S. at 477-78.)

2. *Integrity of Political Subdivisions.* The rule that ool system boundaries long concurrent with municipal ndaries are not to be destroyed by a federal district rt because of the racial disparities among the school

systems, explicit in the *Emporia* case, was made more explicit by this Court in its affirmance of the New Jersey district court in *Spencer* v. *Kugler,* 326 F.Supp. 1235 (D.N.J. 1971), *aff'd,* 404 U.S. 1027 (1972), albeit over the vigorous dissent of Mr. Justice Douglas.

In *Spencer,* a challenge to the constitutionality of New Jersey's statutory scheme establishing the boundaries of school districts to coincide with those of political subdivisions was dismissed for failure to state a claim upon which relief could be granted, even though the complaint alleged that patterns of racial imbalance were being statutorily imposed upon the public schools of New Jersey.

The complaint in the *Spencer* case was quoted by the three-judge court and reveals the essence of its thesis to be the same that is in issue here. (326 F.Supp. at 1240.) The Court of Appeals for the Fourth Circuit appropriately stated:

> . . . We think *Spencer* v. *Kugler, supra,* is indistinguishable and controls decision in this case. (462 F.2d at 1070; Pet. A. 582a)

The holding of the New Jersey district court was as follows:

> . . . It is clear that these legislative enactments prescribe school district boundaries in conformity with municipal boundaries. This designation of school district zones is therefore based on the geographic limitations of the various municipalities throughout the State. Nowhere in the drawing of school district lines are considerations of race, creed, color or national origin made. The setting of municipalities as local school districts is a reasonable standard especially in light of the municipal taxing authority. The system as provided by the various legislative enactments is unitary in nature and intent and any purported racial imbalance within a local

school district results from an imbalance in the population of that municipalty-school district. Racially balanced municipalities are beyond the pale of either judicial or legislative intervention. (326 F. Supp. at 1240.)

t was this judgment, on facts essentially identical with se in this case, that this Court affirmed summarily on ground that it presented no substantial federal question. is was done, as has been noted, over the dissent of Mr. tice Douglas who presented the arguments on which the itioners would rest here.

Mr. Justice Douglas suggested that judicial power could ropriately be asserted on the analogy to some of this rt's decisions in reapportionment cases. We respectfully mit that he was mistaken in this regard. In the only pportionment case that could be deemed analogous to the tual situation here, where Congressional districts were wn in such a manner as to create a largely black district .3%) contiguous to districts containing high proportions of whites (94.9%; 71.5%; 72.5%), this Court specially refused to order the redrawing of the district lines order to secure a better racial balance among them. *ight* v. *Rockefeller*, 376 U.S. 52 (1964). In the absence a showing that the lines were "the product of a state rivance to segregate on the basis of race or place of rth" (376 U.S. at 58), the Court refused to strike down legislature's districting.

Only this Term, this Court in another reapportionment ruled that municipal boundary lines were a proper s for qualifying the rigidity of the one-man, one-vote , although the undiluted right to equality of representa- has been established as a constitutional right while the t to racially balanced school systems has not. In *Mahan Howell*, Nos. 71-364, 71-373, and 71-444, decided Febru-

ary 21, 1973: "With one exception the delegate districts followed political jurisdictional lines of the counties and cities." (Slip op., pp. 3-4.)

Moreover, it should be noted that no opinion of this Court, or any other that has come to our attention, has authorized a federal court to redraw the lines of municipal government for the purposes of its internal affairs except where these lines have been created for unconstitutional ends. Yet, what the trial court proposed to do here was to take away from the city and counties their primary function of local government: education, and to assign this function to a governmental body that would be created by the district court, without vestige of authority either in Virginia law or the decisions of this Court.

The fact is that this Court has justified judicial demands for redrawing lines of local government only where it has been shown that the states had drawn those lines to the end and with the effect of depriving some of its citizens of their constitutional rights. "Racial gerrymandering was forbidden by *Gomillion* v. *Lightfoot*, 364 U.S. 339." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 311 (1966). "A state cannot of course manipulate its political subdivisions so as to defeat a federally protected right, as for example, by realigning political subdivisions so as to deny a person his vote because of race." *Sailors* v. *Kent Board of Education*, 387 U.S. 105, 108-09 (1967).

Not even the petitioners assert that the political boundary lines in this case were created to the end of racial discrimination. They concede that they were not (A. 133a, 134a). The only racial gerrymandering that is involved in this case is that which would be imposed by the district court by redrawing these long existent lines in order to effect a "viable racial mix" among the three school systems. The petitioners have offered this Court not a single instance of

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e exercise of judicial power to redraw lines of local gov-nment where the lines themselves had not been created effect a constitutional violation.

As the minority in *Emporia* pointed out, State governents may establish their own political entities so long as, d that is the case here, the municipalities are "bona fide litical entit[ies] . . . not . . . used as a cloak for evasive tion." (407 U.S. at 479.) The bona fides of the Virginia an of local government was specifically found justifiable these Justices and there was no contradiction of this oposition to be found in the majority opinion:

> The discretion of a district court is further limited where, as here, it deals with totally separate political entities. This is a very different case from one where a school board proposes attendance zones within a single school district or even one where a school district is newly formed within a county unit. Under Virginia law, Emporia is as independent from Greensville County as one State is from another. See *City of Richmond* v. *County Board*, 199 Va. 679, 684, 101 S.E.2d 641, 644 (1958); *Murray* v. *City of Roanoke*, 192 Va. 321, 324, 64 S.E.2d 804, 807 (1951). This may be an anomaly in municipal jurisprudence, but it is Virginia's anomaly; it is of ancient origin, and it is not forbidden by the Constitution. To bar the city of Emporia from operating its own school system is to strip it of its most important governmental responsibility, and thus largely to deny its existence as an independent governmental entity. It is a serious step and, absent the factors that persuade me to the contrary in *Scotland Neck*, decided today, I am unwilling to go that far. (407 U.S. at 478)

There are, of course, cases in which the courts have mpelled changes of *attendance zones* within a school sys-n that was under a mandate to desegregate its schools. at is because the constitutional duty imposed by this

Court since 1954 has been for the desegregation of individual school systems. The individual school systems in this case have been desegregated in conformity with that mandate. The attempt here is to go beyond the desegregation of a school system to effect a racial balance among contiguous school systems. Althought the racial disparity between city and suburban school systems on which petitioners rest their case is not a new phenomenon, no such injunction as the petitioners seek here has ever been issued by a federal court. In none of the plethora of school desegration cases that have been brought in this country has judicial authority extended to redrawing municipal boundaries in the absence of showing abuse of state authority in the creation of these lines.

F. *Busing.* There are still further weights to be thrown on the scales against the propriety of redrawing the school systems lines in order to consolidate them. As the respondents told the Court of Appeals on oral argument, and as the Court of Appeals stated in its opinion (462 F.2d at 1061, n. 2), this is not a busing case. It is not a busing case in the sense that there is no challenge to the use of busses as a tool toward desegregating a school system. But the busing factor is one, nevertheless, to be weighed in determining the propriety of the plan approved by the trial court. The consolidation plan calls for busing some 78,000 of the 104,000 students in the proposed combined systems. It requires busing for long distances and over long periods of time. The conservative estimate of petitioners' experts was that the average distance for busing elementary school students would be 6.6 miles in the first subdivision; 7.3 miles in the second; 7.9 miles in the third; 8.7 miles in the fourth; 7.5 miles in the fifth; and 17.3 miles in the sixth. (A. 216a) The expectation was that the longest distances of travel for each zone would be 50% greater (A. 217a); *i.e.*, 9.9 miles

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in the first division; 11 miles in the second; 11.9 miles in the third; 13.1 miles in the fourth; 11.3 miles in the fifth; and 26 miles in the sixth. The optimistic time range was between fifteen and fifty minutes in each direction. (A. 231a) That these were optimistic estimates was established by uncontradicted testimony about trial runs of routes constructed in accordance with the petitioners' formula, one of which turned out to be 61.6 miles long and two and one-half hours in duration in each direction (A. 1005a-1006a), others of which were 45.6 miles long and 54.4 miles long taking two and two and one quarter hours respectively in each direction (A. 990a-997a). Admittedly, these would be extremes. They are nonetheless suggestive of the overly optimistic estimate of the times and distances that would actually be involved.

The essential evil in the busing system proposed under the plan, however, goes not to the time or distance to be consumed in the busing procedures, but to the method of selection of students to be bussed and the manner of their busing. Selection would be made by a military draft-like birthday lottery. Transportation would be by segregated busloads of all black students or all white students, blacks out of the city of Richmond and whites into the city of Richmond. If three systems are to be consolidated to effect racial balance, there is concededly no alternative to busing blacks in one direction and whites in the other. The evils of segregated busing to this end was, perhaps unwittingly, described by Dr. Pettigrew himself at the trial. When queried about the contribution of parochial and private schools to the school segregation problem, he thought them to be either the "second" or the "third" "major cause of segregation in central cities." He went on to say: "The best way to generate their religion and their prejudice I have ever seen, is to bring kids over to a class and take

them back as a class." (A. 364a) And this is the essence of the problem of the kind of busing necessary to effectuate a central city-suburban consolidation of school systems.

G. *Size.* Still one more factor of the kind weighed in *Emporia* is the question of the size of the proposed new system. When the optimal size of school systems is generally considered to be a minimum of 20,000 and a maximum of 50,000 students (462 F.2d at 1068; Pet. A. 578a-579a),[19] the proposed plan—again a certain result of combining three optimum-size separate school systems—would create a huge unwieldy single system, here one of 104,000 students. Richmond and Henrico were already in the top 1.1% of school system populations in the United States and Chesterfield was in the upper 3.4%. (SX 12; A. 145e-147e) In the United States in 1970, of the 17,498 school systems only 0.2% had 100,000 pupils or more. (SX 12)

H. *School Financing.* It must be recognized that the school systems involved here, unlike some of those in the cases on which petitioners would rely, are not school systems too small to be viable and which, in order to effect desegre-

[19] See, James B. Conant: *The American High School Today*, 1959. Katherine M. Cook: *Reorganization of School Units*, U.S. Office of Education, Bulletin No. 15, 1936. Howard A. Dawson: *Satisfactory Local School Units*, Field Study No. 7, George Peabody College for Teachers, 1934. C. F. Faber: *Measuring School District Quality*, American School Board Journal, October 1964. Charles F. Faber: *The Size of a School District*, Phi Delta Kappan, 1966, pp. 33-35. Calvin Grieder, Truman M. Pierce and K. Forbis Jordan: *Public School Administration*, (New York: The Ronald Press Company, 1969). Michael E. Hickey: *Optimum School District Size*, ERIC Clearinghouse on Educational Administration. John W. Bell and Arthur S. Green: *"Why Not Vertical Administration?"* American School Board Journal, December, 1957, pp. 25-26. Paul R. Mort and Walter C. Reusser: *Public School Finance*, Second Edition, 1951. Arthur D. Swanson: *Relations Between Community Size and School Quality*, Institute of Administrative Research, RESEARCH Bulletin, October, 1961.

gation, may well have to be combined. Nor does this case involve a disparity of financial resources of each local community so that one of the three cannot receive adequate financial support from the government that has responsibility for it. Chesterfield has a tax base in excess of $28,000 per student, Henrico in excess of $31,000 per student, and Richmond in excess of $32,000. (SX 2; A. 1086a) Whether that tax base would be utilized by the citizens of the three communities as generously after consolidation, when the school systems are no longer the responsibility of the taxing bodies to which they were once attached, is more dubious in prognosis than the question of "white flight." School bonds are never popular. They are extraordinarily difficult of passage where the students for whom they provide are not attending schools for which the taxing body is responsible. It might prove to be necessary, if there were a consolidation that separated the school systems from their municipal governments, for the federal courts also to undertake the transfer of the power to tax from those municipal bodies either to itself or to whatever local government the federal district court might choose to create.[20] But that was exactly what was forbidden to federal courts in *San Antonio School District* v. *Rodriguez*.

On the problem of separating school systems from their local tax base this Court said at p. 36 of the Slip Opinion:

> . . . We have here nothing less than a direct attack on the way in which Texas has chosen to raise and disburse state and local tax revenues. We are asked to con-

[20] "But even if we were to ignore Virginia law, as we are urged to do, *there are practicalities of budgeting and finance that boggle the mind*. Each of the three political subdivisions involved here has a separate tax base and a separate and distinct electorate. The school board of the consolidated district would have to look to three separate governing bodies for approval and support of school budgets." (462 F.2d at 1068; Pet. A. 578a) (Emphasis supplied)

demn the State's judgment in conferring on political subdivisions the power to tax local property to supply revenues for local interests. In so doing, appellees would have the Court intrude in an area in which it has traditionally deferred to state legislatures. . . .

1. *Impracticality.* Among the factors to be weighed by this Court in determining the propriety of the proposed consolidation plan is the fact that the consolidation of the three school systems to achieve racial balance would be all but impossible of wider application even in the limited area to which Chesterfield and Henrico counties are contiguous, much less the State of Virginia and the other States of the Union. Richmond with its majority black school population is surrounded by Chesterfield and Henrico Counties with a majority white population. But Chesterfield and Henrico counties are, in turn, surrounded by a ring of counties in all of which the school systems are again desegregated, but many of which are majority black.[21] If there is to be a racial balancing achieved between Henrico and Chesterfield, on the one hand and Richmond on the other, it would necessarily follow—for nothing in the record distinguished the relationship of the school systems of the counties to the city from the relationship of the school systems of the two counties to those of the surrounding counties—that a balance should be struck between the white-black ratios in Chesterfield and Henrico and in Amelia, Charles City, New Kent, Dinwiddie, and Goochland Counties and the City of Petersburg as well. Dr. Pettigrew called this a benign "domino theory" which he applauded. (A 359a) And Dr. Little would have recommended it if Richmond schools had a "viable racial mix" of their own. (A. 263a-264a) And the trial court expressed the same view. (A. 261a) But it

[21] See, Appendix A, *post.*

ould be the courts that would face the difficult problem doling out the white students of Chesterfield and Henrico utward to the surrounding counties and inward to Richond) in order to bring about the "viable racial mix" which e district court decreed here. We respectfully submit that deral courts go beyond their authority and their competnce when they undertake to effectuate Judge Merhige's eory of racial balance among contiguous desegregated hool systems.

J. *"Metropolitanism."* Petitioners take exception to the nguage of the Court of Appeals which said the "federal strict court had undertaken to 'compel one of the States the Union to restructure its internal government' (462 2d, at 1060, Pet. A. 562) 'for the purpose of achieving cial balance' (ibid.)." Petitioners' Brief No. 72-550, p. 50. erhaps the Court of Appeals should have anticipated the nief Justice's language in the *Emporia* case: "To bar the y of Emporia from operating its own school system is to rip it of its most important governmental responsibility, d thus largely to deny its existence as an independent govnmental entity." 407 U.S. at 478. It is this governmental organization that made the Court of Appeals determine at the trial court's order effectuating the consolidation an was violative of the Tenth Amendment (462 F.2d at 061, 1068; Pet. A. 563a, 579a). The proposed decree is, erefore, also inappropriate for a court of equity because clearly violates the powers reserved to the states by the nstitution of the United States.

The essence of the petitioners' position, as is made clear plaintiffs' petition for certiorari, is that "metropolitan" is a better form of local government than the existent vision of authority between cities and their surrounding ritories. The effect of the district court order is to im-

pose partial metropolitan government on Richmond and the adjacent counties of Henrico and Chesterfield. The creation of metropolitan governments is a most difficult and complex political problem. But it is a political problem that must be solved politically and not by the courts. The record here certainly does not warrant judicial intrusion into this highly political area. (cf. *San Antonio School District* v. *Rodriguez, supra.*)

K. *Conclusion.* There is no authority in the federal courts to restructure desegregated, unitary school systems by consolidating them in order to secure a racial balance within all of the contiguous school systems. There is neither precedent nor analogy where the school systems are already unitary, where they are economically and educationally adequate, where they are integral parts of the local government from which they would be severed. Even if the power existed to impose federal judicial will on state legislative discretion, it ought not to be condoned where the relevant factors weigh so heavily, as they do here, against the exertion of such extraordinary power.

"No fixed or even substantially fixed guidelines can be established as to how far a court can go, but it must be recognized that there are limits." (*Swann*, 402 U.S. at 28.) Clearly the district court decree goes beyond those limits.

III.

CONCLUSION

The decision of the Court of Appeals for the Fourth Circuit is clearly in accord with the precedents and principles laid down by this Court. Petitioners have offered no "constitutional violation" on which to predicate any judicial relief, much less a consolidation decree the sole effect of which is to create a "viable racial mix" in all schools in all

ee systems; action which violates principles adhered to this Court through twenty years of deliberation and lgment.

Whichever thesis of the petitioners is considered, the estion comes down every time to whether a school system h a substantial black majority is necessarily inconsistent h the requirements of desegregation expressed by *Brown* l its progeny. For if a black majority school body is unconstitutional per se, the schools of Richmond are egregated as this Court has defined desegregation. If Richmond schools are found not to be unitary, it can y be because a black majority school system must always constitutionally defective if it is possible to create a ite majority by the importation of pupils from adjacent itical divisions. Neither racial balance nor any particular ial quota can be constitutionally required.

We respectfully submit that this Court cannot, con-tently with the principles that it has enunciated from *own* through *Swann*, approve the concept that systems h black school majorities are intrinsically poorer school tems than those with white majorities. It would have to ect its own teachings about the equality of the races reverse the judgment of the court below. We respectfully uest that this Court adhere to its principles and affirm judgment of the Fourth Circuit.

Respectfully submitted,

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CERTIFICATE

The undersigned, a member of the bar of this Court, hereby certifies that on the 31st day of March, 1973, he served three (3) copies of the foregoing Brief for Respondents upon all counsel for all parties required to be served by depositing same in the United States mail, first class postage, prepaid, addressed as follows:

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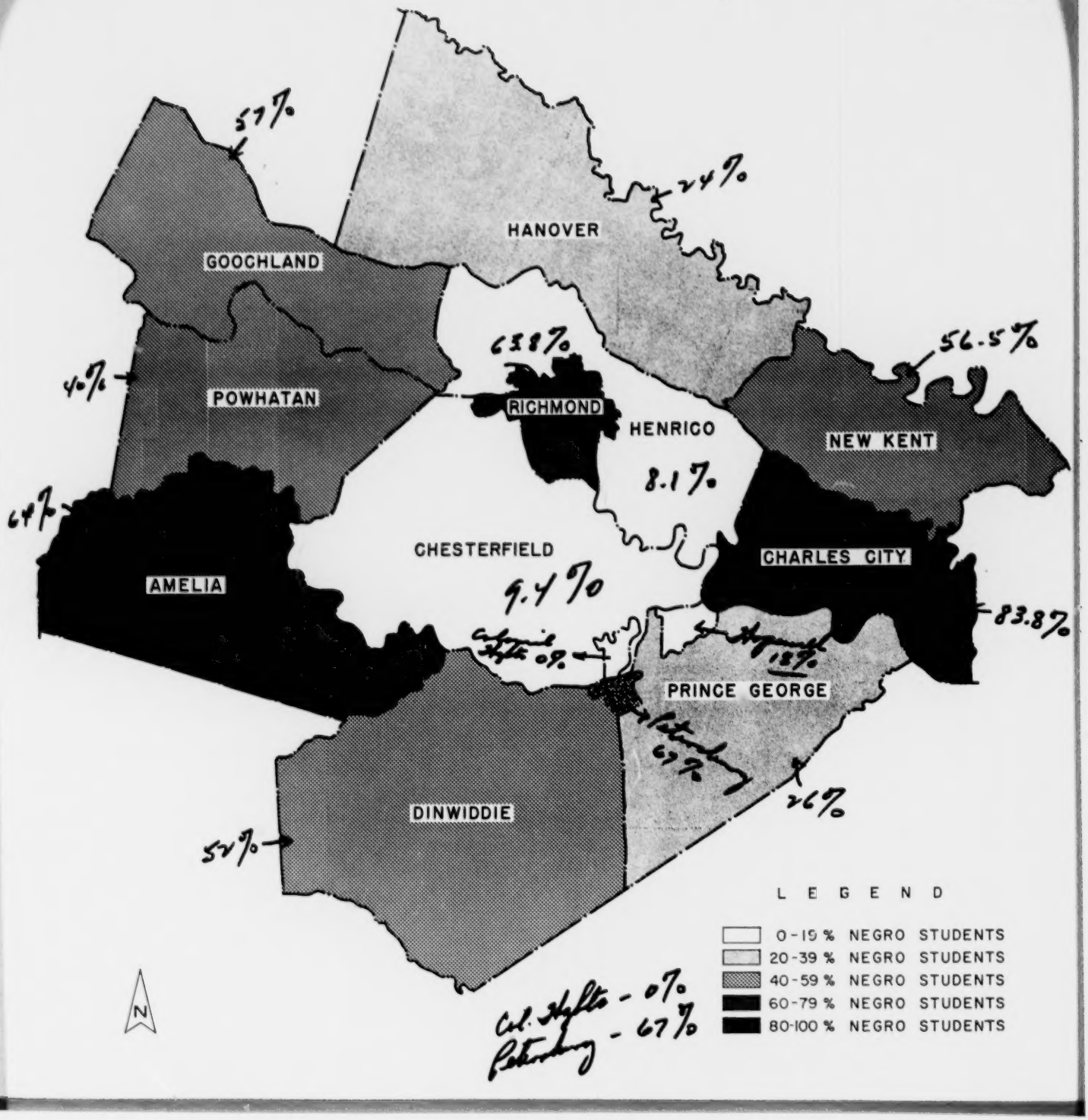
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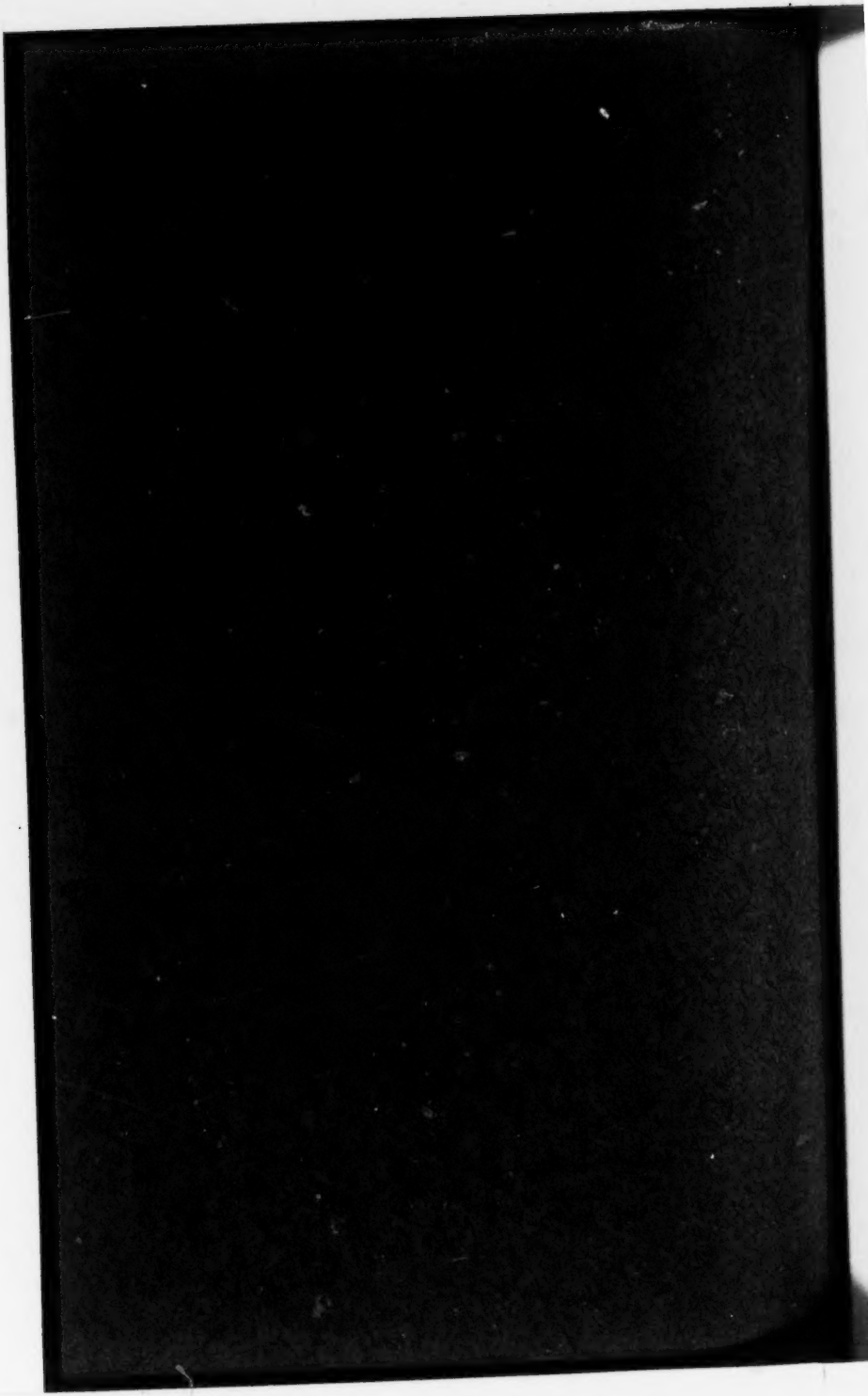
57%
24%
63.8%
56.5%
40%
8.1%
64%
9.4%
83.8%
52%
26%
LEGEND
0-19 % NEGRO STUDENTS
20-39 % NEGRO STUDENTS
40-59 % NEGRO STUDENTS
60-79 % NEGRO STUDENTS
80-100 % NEGRO STUDENTS
N
Col. Heights - 0%
Petersburg - 67%



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the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-549

OL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL., PETITIONERS

v.

E BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.

No. 72-550

CAROLYN BRADLEY, ET AL., PETITIONERS

v.

E BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.

RIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

ORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

e United States has substantial responsibility r 42 U.S.C. 2000c-6, 2000d, and 2000h-2, with ct to school desegregation. This Court's resolution e issues presented in this case will affect that en- ment responsibility. The United States partic- l as *amicus curiae* in this case in the court of

appeals and has participated in this Court's previous school desegregation cases, including *Brown* v. *Board of Education,* 347 U.S. 483; 349 U.S. 294; *Cooper* v. *Aaron,* 358 U.S. 1; *Goss* v. *Board of Education,* 373 U.S. 683; *Green* v. *County School Board of New Kent County,* 391 U.S. 430; *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19; *Swann* v. *Board of Education,* 402 U.S. 1; *Wright* v. *Council of City of Emporia,* 407 U.S. 451; *Keyes* v. *School District No. 1, Denver, Colorado,* No. 71–507, this Term; and *Norwood* v. *Harrison,* No. 72–77, this Term.

I. INTRODUCTORY STATEMENT

The issue in this case is whether the district court, acting under this Court's mandate "to eliminate racially separate public schools established and maintained by state action," [1] abused its remedial discretion by ordering the consolidation of a city school system and two surrounding county school systems in order to achieve a more uniform distribution of the races in the schools throughout the area, where each of the school systems had been operated as a dual, segregated system in the past, where each was assumed by the district court to be now operating a unitary system within its boundaries (Pet. App. 238a), and where there is no evidence that the boundaries were established on account of race.

Prior to *Brown* v. *Board of Education,* 347 U.S. 483, the school system in the City of Richmond, as well as the school systems throughout the Commonwealth of

[1] *Swann* v. *Board of Education,* 402 U.S. 1, 5.

irginia, were racially segregated (Pet. App. 189a). fter *Brown I* and *Brown II*,[2] state and local officials Virginia used a variety of methods to resist desegre-ating their schools (Pet. App. 313a).

This lawsuit began in 1961, when individual plain-ffs sued to require desegregation of the school system the City of Richmond. In 1966, after protracted roceedings, the district court entered a decree order-g the Richmond school system to implement a "free-om of choice" plan.[3]

The current phase of this litigation commenced on larch 10, 1970, with the filing by the plaintiffs of a mo-on for further relief on the basis of the 1968 decisions *Green* v. *County School Board*, 391 U.S. 430, and its ompanion cases,[4] holding that freedom-of-choice pro-rams that fail to bring about desegregation are consti-tionally inadequate remedial measures. The Richmond chool Board "admitted that their freedom of choice lan, although operating in accordance with [the istrict court's] order of March 30, 1966, was operat-g in a manner contrary to constitutional require-ents" (Pet. App. 2a) and proposed two desegrega-on plans for the City schools, the second of which e court adopted on an interim basis for the 1970–71 school year (Pet. App. 40a–41a, 182a). The plain-

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[2] *Brown* v. *Board of Education*, 349 U.S. 294.

[3] See *Bradley* v. *School Board of the City of Richmond*, 317 2d 429 (C.A. 4); *Bradley* v. *School Board of the City of hmond*, 345 F. 2d 310 (C.A. 4), vacated and remanded, 382 5. 103; see also the August 17, 1970, opinion of the district rt below, at Pet. App. 1a.

[4] *Raney* v. *Board of Education*, 391 U.S. 443; *Monroe* v. *ard of Commissioners*, 391 U.S. 450.

tiffs had also proposed their own plan, involving zoning and pairing within the Richmond school system (Pet. App. 24a). The district court found that this plan could not be implemented in time for the upcoming school year, but "would, if adopted, create a unitary system," and that the plan "may well not only create a unitary system, but do much toward the thwarting of resegregation of schools once the unitary system has been put into effect" (Pet. App. 41a). The court also found that "there is no intractible remnant of segregation in the City of Richmond school system * * *" (*ibid.*).

In April 1971, after further hearings, the district court ordered the Richmond school system to operate under a new plan, designated Plan III, for the 1971-1972 school year (Pet. App. 110a-155a). Plan III had been proposed by the Richmond School Board (Pet. App. 111a, 119a) as an alternative to the plan earlier suggested by plaintiffs. Since in the court's view "either plan would fulfill the School Board's legal duty" (Pet. App. 146a), the court deferred to the School Board's proposal. The court concluded that when implemented, Plan III would eliminate "the racial identifiability of each facility to the extent feasible within the City of Richmond" (Pet. App. 121a; 325 F. Supp. 828, 835).[5]

Under Plan III, the racial composition of high schools in Richmond would range from 57 percent black and 43 percent white to 79 percent black and

[5] In regard to the present status of the Chesterfield and Henrico County school systems, which surround Richmond, see n. 8, *infra*.

percent white; middle schools would range from percent black and 61 percent white to 81 percent ck and 19 percent white; and elementary schools uld range from 34 percent black and 66 percent ite to 80 percent black and 20 percent white (Pet. p. 142a–144a). For the 1971-1972 school year, the ial composition of the student population of the chmond school system as a whole was 69 percent ck and 31 percent white, with 29,750 black students d 13,500 white students (Pet. App. 417a). The Richnd school system operated under Plan III in 1971–72 and has continued to do so (Pet. App. 564a).

On July 6, 1970, nearly one year before the court opted Plan III, the district judge wrote to counsel the plaintiffs suggesting that "It may be that it would appropriate for the defendant school board to diss with the appropriate officers of the contiguous unties as to the feasibility or possibility of consolition of school districts * * *" (Pet. App. 83a–84a). e counties referred to are Chesterfield and Henrico, ich lie on the boundaries of the City of Richmond.[6] ch of these counties had a student population that s more than 90 percent white in the 1970–1971 hool year (Pet. App. 566a). In 1971–1972, Chesterld County enrolled 21,588 white and 2,166 black dents (Pet. App. 418a); during the same period

[6] In Virginia, cities are completely independent from counties; s have territorial exclusivity and integrity and their taxing sdiction does not overlap with that of the neighboring coun- See McSweeney, *Local Government Law in Virginia, 1870–*, 4 U. of Richmond L. Rev. 174, 177 (1970).

Henrico County had 31,299 white and 3,018 black students (Pet. App. 417a).

On December 5, 1970, the district court granted the motion of the Richmond School Board (App. 90a–97a) to join, as parties defendant, the School Boards and Boards of Supervisors of Chesterfield and Henrico Counties (Pet. App. 184a; 51 F.R.D. 139).[7] Late in the summer of 1971 the court began hearings on the Richmond School Board's complaint that Chesterfield and Henrico Counties had failed to assist Richmond in the desegregation of the Richmond metropolitan area schools and that the Fourteenth Amendment required a "unitary public school system which reasonably reflects the racial composition of the City of Richmond and the Counties of Henrico and Chesterfield * * *" (App. 94a).

On January 10, 1972, the court fashioned new relief in this case by ordering the consolidation of the school systems of the City of Richmond and Chesterfield and Henrico Counties into a single, combined school district, resulting in a population of 65 percent white and 35 percent black students (Pet. App. 417a–418a). Under the consolidation plan, which has not been implemented, the area would be divided into six geographical subdivisions, five of which would emanate from the center of Richmond to the outlying Counties roughly like wedges of a pie, thus bringing together within school attendance zones areas of the black inner City and the white suburban Counties (Ex. App.

[7] The court also ordered the joinder of the State Board of Education and the State Superintendent of Public Instruction.

e-33e). The result would be that nearly all black idents in the region would attend schools that are 20 40 percent black (Pet. App. 570a).

The court of appeals reversed the district court's der requiring consolidation of the three school stems[8] on the ground that the district court had properly compelled "one of the States of the Union restructure its internal government for the purpose achieving racial balance in the assignment of pupils the public schools" (Pet. App. 562a).

In analyzing the questions presented by this case, is first necessary to determine what particular constitutional violation or violations, if any, are present. the only violation is the operation of a dual school stem within the City of Richmond, we believe that e court is limited in its remedial powers to fashion- relief within the boundaries of the City school stem. If, on the other hand, there is also an inter- stem violation—that is, a constitutional violation at in some manner involves two or more of the hool systems—a remedy tailored to eliminate that olation should also be fashioned. In this case, how- er, the record does not reveal an inter-system olation and we therefore conclude that the dis- ct court exceeded its remedial powers in ordering solidation.

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[8] The court of appeals found that the Chesterfield and Hen- County school systems, which surround Richmond, have ergone a transformation from *de jure* segregation to a ary system within each county (Pet. App. 571a–572a).

II. THE REMEDIAL POWERS OF A DISTRICT COURT TO DISMANTLE A CITY'S DUAL SCHOOL SYSTEM DO NOT, IN THE ABSENCE OF AN INTER-SYSTEM CONSTITUTIONAL VIOLATION, EXTEND TO ORDERING THE REFORMATION OF LONG STANDING, NEUTRALLY ESTABLISHED SCHOOL SYSTEM BOUNDARY LINES AND THE CONSOLIDATION OF CITY AND COUNTY SCHOOL SYSTEMS

It is not disputed here that in the past the school system of the City of Richmond was *de jure* segregated and that the City's school authorities have an affirmative duty to dismantle that dual school system. *Swann* v. *Board of Education,* 402 U.S. 1. The question now presented concerns the remedial powers of a federal court in fashioning relief to insure the dismantling of such a system.

With respect to the basis for its order, the district court concluded in its lengthy opinion (Pet. App. 164a–520a) that the previously dual school system of the City of Richmond cannot be desegregated unless it is consolidated with the school systems of Chesterfield County and Henrico County, even if each school system were "legally now unitary within itself" (Pet. App. 238a). The court apparently reached this conclusion, which is contrary to the court's earlier findings (Pet. App. 24a, 121a; see p. 4, *supra*), on two grounds: (1) that the racial composition of the school system of the City of Richmond, when compared with the school systems of the two surrounding Counties, is disproportionately black, thus resulting in racially identifiable school systems (*e.g.,* Pet. App. 186a, 188a, 201a, 208a–210a, 230a, 237a–238a); and (2) that, in the court's view, it was necessary to

bring more white students into the school system of the City of Richmond in order to achieve a "viable racial mix" and, hence, more stable desegregation (*e.g.*, Pet. App. 200a, 207a, 230a, 237a, 238a, 416a–418a, 437a–440a, 444a–445a, 519a).[9] In our view, neither ground justifies the relief granted by the district court; nor, for the reasons stated in point III, *infra,* is similar relief warranted here on the basis of any inter-system constitutional violation.

A. THE CONSTITUTION REQUIRES THAT RICHMOND'S DUAL SCHOOL SYSTEM BE DISMANTLED, BUT THIS MANDATE DOES NOT WARRANT REQUIRING THE CITY SCHOOL SYSTEM TO BE RACIALLY BALANCED AS COMPARED WITH THE SCHOOL SYSTEMS OF THE SURROUNDING COUNTIES

A school system that has operated in the past as a dual system, with one set of schools for white children and another for blacks, has a constitutional obligation totally to eliminate such racial discrimination from its schools and to achieve a unitary system. "The constant theme and thrust of every holding from *Brown I* to date is that state-enforced separation of races in public schools is discrimination that violates the Equal Protection Clause. The remedy commanded was to dismantle dual systems." *Swann* v. *Board of Education, supra,* 402 U.S. at 22. Thus, "School boards * * * operating state-compelled dual systems were * * * clearly charged with the affirmative duty to take what-

[9] The court said that it did not intend "to require a particular degree of racial balance or mixing" and would allow deviations from the "viable racial mix contemplated by the [consolidation] plan" if they appeared appropriate (Pet. App. 519a–520a).

ever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green* v. *County School Board,* 391 U.S. 430, 437–438.

The Richmond public school system, like other public school systems in the Commonwealth of Virginia, is operated, maintained and supervised by the local school board (Pet. App. 576a). In the past the Richmond School Board operated a dual school system. The purpose of this lawsuit, originally instituted in 1961, is to require the Richmond School Board to dismantle that dual system in accordance with the decisions of this Court, which require that the City school system operate not white schools or black schools, but "just schools." *Green* v. *County School Board, supra,* 391 U.S. at 442. And as the district court itself found at one point (see p. 4, *supra*), it appears that successful implementation of Plan III will achieve that result with respect to the Richmond school system.

Nevertheless, the district court ordered consolidation of the Richmond school system with the school systems of Henrico and Chesterfield Counties. The court assumed that if each of the three school systems were considered separately, each would be operating a unitary system in compliance with the mandates of this Court (Pet. App. 238a), but it held that the conversion of these three formerly dual school systems into three separate unitary school systems would not be enough to satisfy the requirements of the Fourteenth Amendment.

The opinion of the district court and the record suggest a number of different sources from which the court derived this affirmative duty to consolidate school systems. First, the view not infrequently expressed in the expert testimony upon which the court relied is that it is harmful for blacks to go to school in predominantly black schools (*e.g.*, App. 263a–365a [Dr. Thomas Pettigrew], 194a–264a [Dr. Thomas C. Little]; Pet. App. 186a–190a, 197a–200a, 477a–478a). But while this is so with respect to state-segregated schools (see *Brown* v. *Board of Education*, 347 U.S. 483, 494), it does not readily follow that blacks attending predominantly black schools operated by a neutrally-established predominantly black school system experience this harm,[10] particularly in a situation such as that present here, where one of the most recent actions of local authorities was to bring more than 8000 additional students into the system, 98 percent of whom were white (Pet. App. 178a); at the least, expert opinion is divided on this question.[11] Moreover, we deal here with a constitutional issue—whether legislative authorities are to be foreclosed from making their own choices

[10] See *Brunson* v. *Board of Trustees of School District No. 1*, 429 F. 2d 820, 824, 826 (C.A. 4) (Sobeloff, J., concurring, rejecting the theories of Dr. Pettigrew, one of plantiffs' principal expert witnesses).

[11] See the authorities discussed in Goodman, *DeFacto School Segregation: A Constitutional and Empirical Analysis*, 60 Calif. L. Rev. 275, 308–310, 336–338 (1972), and Bickel, *The Supreme Court and the Idea of Progress* 138–141 (1970); Cf. Mosteller and Moynihan, *On Equality of Educational Opportunity* 6–7 (1972); see also Pet. App. 452a, summarizing the testimony of Dr. Hooker, and note 10, *supra*.

among the various educational and sociological theories involved. Though the Fourteenth Amendment does forbid racial classifications, it neither "enact[s] Mr. Herbert Spencer's Social Statics," *Lochner* v. *New York*, 198 U.S. 45, 75 (Holmes, J., dissenting), nor does it prescribe the internal reorganization of states to serve sociological theories.

Another possible basis for the district court's decision is the view that there are generally educational and administrative advantages in having larger school systems (*e.g.*, Pet. App. 271a–281a), a view apparently supported by "the established policy of the [State] Board [of Education] to recommend larger units of administration" (*id.* at 272a). Whatever may be the desirability of centralization of school administration as a matter of social or legislative policy,[12] however, there is nothing inherently unconstitutional about having different school systems serving different geographical areas separated by boundary lines that have not been drawn on account of race. Of course, as a school district's boundaries are expanded to encom-

[12] Consolidation and centralization are, of course, not universally endorsed by those in this field. See *Bickel*, *supra*, note 11, at 140–141. A preference for local control of school policies and administration within the confines of governmental units bearing the requisite fiscal and budgetary responsibility, rather than mere adherence to political subdivision lines for their own sake, is a principal countervailing consideration (see p. 20, *infra*, and n. 19, *infra*). This was ignored in the district court's statement that, on the basis of what it regarded as "the insubstantiality of racial reasons for adhering to political subdivision boundaries as attendence limits," it inferred "that insistence on such a policy must be predicated on its known racial effects" (Pet. App. 258a).

pass larger areas and hence more people, the school district's population tends to reflect the racial mix of the population of the surrounding region. But with respect to school systems, the Fourteenth Amendment does not prefer centralization and consolidation over more localized control and it does not require a State to have only one school system for its entire population, even if state boundaries are the logical stopping points in the consolidation process.

In determining that one school system for the entire region should be created, the district court relied upon (Pet. App. 187a) this Court's statement in *Swann, supra,* 402 U.S. at 26, that for remedial purposes, there is "a presumption against schools that are substantially disproportionate in their racial composition." But disproportionate in relation to what? Surely not to some absolute standard, for the Constitution does not establish any fixed ratio of black students to white students that must be achieved. Instead, whether a particular school is racially imbalanced or identifiable can be determined only by comparing it with "the racial composition of the whole school system." *Swann* v. *Board of Education, supra,* 402 U.S. at 25; see also *id.* at 24.

Thus, the question whether, for example, an elementary school having a student body 70 percent black and 30 percent white is racially imbalanced or has a substantially disproportionate racial composition is in itself unanswerable. Some frame of reference is needed and, as *Swann* indicates, the proper compari-

son (to the extent that racial balance is relevant) is with the racial composition of the population in the school system operating the particular school since the purpose is to ensure complete elimination of the dual system by having one set of schools for both blacks and whites. And under *Swann* there would be no presumption against schools, such as the one in the example above, if these schools reflected the black-white ratio of the entire school system. 402 U.S. at 25–26.

Why then would there be a presumption against the school system itself with the same 70:30 ratio of blacks to whites, as the district court concluded here with respect to the school system of the City of Richmond? (Pet. App. 186a–188a.) Stated differently, on what basis could the district court conclude that its remedy should reach outside the school system of the City of Richmond? Apparently, the court believed that it must look beyond the Richmond system in fashioning relief because the City school system is racially disproportionate or imbalanced in relation to the adjacent County school systems, thereby resulting in racial identifiability of the three systems (*e.g.*, Pet. App. 185a–187a, 230a, 237a–238a). But the court had to look beyond the Richmond system and compare it with the surrounding Counties in the first place in order to determine whether the Richmond system is racially imbalanced in comparison with the adjacent systems. This is not only circular as a reason for

fashioning relief beyond the Richmond system,"[11] but also heedless of the extent of the constitutional violation being remedied.

As this Court held in *Swann*, "the nature of the violation determines the scope of the remedy." 402 U.S. at 16. Here the school children of Richmond were not racially segregated from the school children of Henrico or Chesterfield Counties (see point III, *infra*). The district court was therefore required, in devising a desegregation plan for the Richmond system, to order a remedy for implementation within that system and not beyond. That was the frame of reference for determining whether the Richmond school system had violated the Constitution and it likewise delineated the permissible extent of relief. Having found that the Richmond system was not in compliance with constitutional requirements, the court had a duty to correct "the condition that offends the Constitution," *Swann v. Board of Education, supra*, 402 U.S. at 16, not a commission to act more generally as a problem-solver implementing programs and policies (contrary to state law) that some might find enlightened or desirable.

The district court's ruling to the contrary obscures the distinction between requiring the dismantling of a dual school system and requiring a particular racial

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[11] Of course, where the issue is whether there has been an inter-system violation, such as racial discrimination in the establishment of school district lines, the scope of the inquiry necessarily extends beyond the confines of a single system. *See, e.g.*, the cases cited in n. 14, *infra*.

mix for the school system as a whole, as consideration of this Court's recent decisions in *Wright* v. *Council of City of Emporia*, 407 U.S. 451, and *United States* v. *Scotland Neck Board of Education*, 407 U.S. 484, illustrates. In both *Wright* and *Scotland Neck*, newly drawn (or newly implemented, in the *Wright* case) school system boundary lines would have had the effect of impeding desegregation of a dual school system. As the Court explained in *Wright*, the city was properly enjoined from withdrawing from the joint city-county school system because "[t]he court's remedial power was invoked on the basis of a finding that the dual school system violated the Constitution, and since the city and county constituted but one unit for the purpose of student assignments during the entire time that the dual system was maintained, they were properly treated as a single unit for the purpose of dismantling that system." 407 U.S. at 459–460.[14]

Here by contrast there is no history comparable to that in *Wright* of the City and either of the Counties constituting one school system during the period when dual systems were operated. Instead, these boundary lines were neutrally established, without regard to race, and have been coterminous with the political sub-

[14] Federal courts have also properly enjoined the maintenance of separate small black school districts that were created "to reflect racial separation by schools" and ordered consolidation of these districts with neighboring white districts. *E.g.*, *Haney* v. *County Board of Education of Sevier County*, 429 F. 2d. 364, 366 (C.A. 8); *United States* v. *Texas*, 321 F. Supp. 1043 (E.D. Texas), affirmed, 447 F. 2d 441 (C.A. 5), certiorari denied *sub nom. Edgar* v. *United States*, 404 U.S. 1016.

divisions of the City of Richmond and the Counties of Chesterfield and Henrico for more than 100 years (Pet. App. 571a).[5] Indeed the court of appeals here "searched the 325-page opinion of the district court in vain for the slightest scintilla of evidence that the boundary lines of the three local governmental units have been maintined either long ago or recently for the purpose of perpetuating racial discrimination in the public schools" (Pet. App. 571a).

Thus, in our view, when the Richmond school system has achieved a unitary system within its own neutrally established boundaries it has complied with the constitutional requirement that it dismantle its dual school system.

B. THE DISTRICT COURT ABUSED ITS DISCRETION IN REQUIRING THE REFORMATION OF LONG STANDING, NEUTRALLY ESTABLISHED SCHOOL DIVISION LINES IN ORDER TO ACHIEVE A "VIABLE RACIAL MIX"

The district court also believed that the school system of the City of Richmond could not become a unitary system within its boundaries because a "viable racial mix" would not be possible in light of the racial composition of Richmond's population (Pet. App. 207a, 420a, 519a; see, *e.g.*, *id.* at 201a, 230a, 237a–238a, 436a–442a, 444a). The court pointed to evidence that the current proportion of blacks to whites in the Richmond school system had resulted in

[5] The only change in these boundary lines occurred when the City annexed some of the land in the two Counties. This recent annexation added some 8,000 pupils to the Richmond system, of whom 98 percent were white (Pet. App. 177a–178a).

whites leaving Richmond's public schools and that unless the trend were reversed, the City's schools might become all black.[16]

The duty of the district court in this case was to ensure that the Richmond school system converted to a unitary system. And as we have discussed, see pp. 11–17, *supra,* as long as the school authorities operate just schools instead of one set of schools for blacks and another for whites, it matters not at all whether the system has more black students than white students or vice-versa. The schools of Vermont are not segregated even though most of them are all white. Under the district court's theory and its consolidation order, which would reverse the racial composition of the Richmond schools from majority black to majority white, the apparent goal is to have a school system with substantially more white children than black children. But the Fourteenth Amendment does not prefer predominantly white school systems over predominantly black school systems and it does not sanc-

[16] The district court stated: "The term 'viable racial mix' was defined by Dr. Little as 'It is a racial mix that is well enough established that it will continue to prosper. It will be a desirable, reasonable mix for educational purposes * * *.'" (Pet. App. 420a n. 22). The court apparently relied heavily upon the testimony of an expert witness, Dr. Pettigrew, that in order to achieve "integration" the racial composition of each school should be between 20 percent and 40 percent black, and rejected the testimony of another expert witness, Dr. Hooker, that the idea that blacks must always be in the minority in each school is a racist proposal. See Pet. App. 567a–570a. (Dr. Pettigrew agreed, however, that under Plan III the Richmond school system was "desegregated" (App. 321a).)

n the district court's transforming its preferences this regard into a constitutional command.

We of course agree that the federal courts have le discretion to bring about unitary school systems. t as Chief Justice Marshall stated long ago, to say at the matter is within a court's discretion means at it is addressed not to the court's "inclination, but its judgment; and its judgment is to be guided by nd legal principles."[17] The purpose of a court-lered remedy in these cases is to cure the violation, correct "the condition that offends the Constitu-n." *Swann* v. *Board of Education, supra,* 402 U.S. 16. Yet here the district court, instead of ordering ief within the bounds of Richmond's constitutional lation, went far beyond in the hope of forestalling result of a possible migration of whites from the y, a result not in itself unconstitutional but thought the district court to be undesirable.

If a certain desegregation plan would become inef-tive shortly after implementation this is certainly nething the district court should consider. Surely it uld have been proper in this case for the district rt to seek a remedy within the Richmond system t promised maximum stability.[18] But the desire to

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[17] *United States* v. *Burr*, 25 Fed. Cas. 30, 35 (No. 14,692d, 7).

[18] Indeed at one point in the present litigation the district t found that a plan analogous to Plan III "may well not create a unitary system, but do much toward the thwarting resegregation of schools once the unitary system has been into effect" (Pet. App. 41a).

preserve the existing racial character of the City of Richmond or of its school system is not of constitutional dimensions and does not warrant including within the scope of relief other school systems that are uninvolved in Richmond's violation. Petitioners may prefer a consolidated school system with a large, stable white enrollment; the Constitution does not.

Moreover, as against petitioners' desires in this regard, there is a legitimate interest—recognized by this Court in an analogous context—in maintaining the integrity of the existing, neutrally established political boundaries between the City of Richmond and the surrounding Counties since disregard of these boundaries may substantially impair the normal functioning of local government. *Mahan* v. *Howell,* No. 71–364, decided February 21, 1973, slip op. at 7. As the court of appeals concluded, the district court's consolidation order gives rise to "practicalities of budgeting and financing that boggle the mind. Each of the three political subdivisions involved here has a separate tax base and a separate and distinct electorate. The school board of the consolidated district would have to look to three separate governing bodies for approval and support of school budgets" (Pet. App. 578a). Cf. *San Antonio Independent School District* v. *Rodriguez,* No. 71–1332, decided March 21, 1973, slip op. at 49–50.[19]

[19] In *Rodriguez* this Court also pointed out that (slip op. at 45–46):

"The persistence of attachment to government at the lowest level where education is concerned reflects the depth of commitment of its supporters. In part, local control means, as Profes-

Thus, we believe the court of appeals properly concluded that since the constitutional violation was the operation of a dual school system within the bounds of the City of Richmond, the proper remedy is to assure that that system is effectively replaced with a unitary school system within the City. The district court therefore exceeded the proper bounds of its remedial discretion in ordering the reformation of long standing, neutrality established school division boundary lines in order to achieve what is considered to be a more "viable racial mix."

II. THE RECORD DOES NOT REFLECT ANY INTERSYSTEM CONSTITUTIONAL VIOLATION

To conclude that the remedial power of the district court to dismantle Richmond's dual school system was limited to fashioning a remedy within long standing, neutrally established school system boundary lines does not, however, end the inquiry in this case. The court of appeals also carefully considered whether there was any constitutional violation involving more than one school system, and concluded there was not (Pet. App. 572a; see also amended complaints at App. 69a, 721a).

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or Coleman suggests, the freedom to devote more money to the education of one's children. Equally important, however, is the opportunity it offers for participation in the decision-making process that determines how those local tax dollars will be spent. Each locality is free to tailor local programs to local needs. Pluralism also affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence. An analogy to the Nation-State relationship in our federal system seems uniquely appropriate. * * *"

While it is difficult to determine the extent to which the district court found an inter-system, as distinguished from an intra-system, violation in this case, the court of appeals stated specifically that it found no inter-system violation because there had been "no joint interaction between any two of the units involved" or any action by higher state officials "for the purpose of keeping one unit relatively white by confining blacks to another" (Pet. App. 572a). We agree that the record does not support a finding that the State's maintenance of the three separate systems constituted an invidious racial classification.

The mere existence of long-standing, neutrally established governmental lines separating the now predominantly black City of Richmond from the predominantly white suburban Counties of Chesterfield and Henrico is not, by itself, an invidious racial classification. Cf. *Wright* v. *Rockefeller*, 376 U.S. 52; *Jefferson* v. *Hackney*, 406 U.S. 535. Nor does the Equal Protection Clause require racial balance between separate school systems in a single State.[20] *Spencer* v. *Kugler*, 404 U.S. 1027, affirming 326 F. Supp. 1235 (D.N.J.).

In *Spencer* this Court affirmed the district court's decision that, at least in States not recently operating dual school systems, extreme racial imbal-

[20] Indeed, the Constitution does not necessarily require racial balance in schools in a single school district, even if that district was formerly dual. See *Swann* v. *Board of Education*, *supra*, 402 U.S. at 24 ("The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.").

ance, without more, does not require neutrally established school district boundary lines to be revised. 326 F. Supp. at 1243. If, as we have suggested above, pp. 9–21, *supra,* the operation of a dual school system normally constitutes an intra-system violation to be remedied within the confines of the system, *Spencer* applies as well in States where dual systems recently existed. In the absence of any independent proof of inter-system discrimination, the three school systems in this case, in their relationship with the State and with each other, stand on no different footing than the racially disparate systems in *Spencer.*

The question, then, is what if any independent proof of inter-system discrimination exists here. That question can be approached in much the same manner as the question of *de jure* segregation *within* a school system where State law has not required segregation. Cf. *Keyes* v. *School District No. 1,* No. 71–501 (argued October 12, 1972). Just as neutrally drawn, long-standing neighborhood zone lines are presumptively nondiscriminatory,[21] so also, in our view, are neutrally drawn long standing district lines. Cf. *Mahan* v. *Howell, supra.*[22]

Petitioners rely primarily on evidence of housing discrimination and of various kinds of either intra-system or state-wide racial discrimination to overcome

[21] See *Deal* v. *Cincinnati Board of Education,* 419 F. 2d 1387, 1393 (C.A. 6); *Bell* v. *School City of Gary, Indiana,* 324 F. 2d 209 (C.A. 7), certiorari denied, 377 U.S. 924.

[22] Of course, school district lines that were used as the instruments of racial segregation of the schools are not "neutrally drawn." See the cases cited in note 14, *supra.*

this presumption.[23] The housing pattern in the Richmond metropolitan area is similar to that found in most metropolitan areas of this country. The inner city has a large black population and the surrounding suburbs are primarily white. While the causes of this housing pattern are manifold, the court of appeals accepted the contention "that within the City of Richmond there has been state (also federal) action tending to perpetuate apartheid of the races in ghetto patterns throughout the city, and that there has been state action within the adjoining counties also tending to restrict and control the housing location of black residents" (Pet. App. 572a).

Other acts cited as establishing an inter-system violation are Virginia's "massive resistance" campaign against school desegregation (Pet. App. 313), various types of delaying actions undertaken to resist desegregation of the Richmond schools (Pet. App. 189a), actions by state officials tending to reinforce racism (Pet. App. 189a), construction of racially identifiable schools after *Brown I* (Pet. App. 287a), discrimination in public employment in Henrico and Chesterfield Counties (Pet. App. 510a), lack of public transportation for poor persons (Pet. App. 514a), past state restrictions on inter-racial contacts of various kinds,[24] and state approval of school construction

[23] They also mention past instances of transportation of black students across school division lines in the State in order to perpetuate state-enforced segregation of schools (Pet. App. 360a; cf. *id.* at 388a). See p. 26, *infra*.

[24] See, *e.g.*, *Boynton* v. *Virginia*, 364 U.S. 454; *Loving* v. *Virginia*, 388 U.S. 1; *NAACP* v. *Button*, 371 U.S. 415.

sites without regard to the impact on school desegregation (Pet. App. 206a).

Such acts are a shameful part of our history, and the Nation has in recent years enacted laws to remedy many of them. See, *e.g.*, 42 U.S.C. 1973 (voting), 2000e (employment), and 3601–3619 (housing). See also the Virginia Fair Housing Law, enacted in 1972, Code of Virginia, Title 36, Chapter 5. But even if some or all of these acts, including participation in residential housing discrimination, have contributed in some degree to the present racial composition of the public schools in the three school systems within the metropolitan Richmond area, the question remains whether there is a sufficiently proximate and substantially causal relationship to the racial disparity between school systems to warrant a conclusion that state-enforced racial discrimination in the public schools has resulted.[25]

Racial discrimination in such areas as housing, employment, and public expenditures are serious problems that must be attacked directly so that they can be eliminated from our society. But as this Court said in *Swann, supra,* 402 U.S. at 22–23:

> The elimination of racial discrimination in public schools is a large task and one that

[25] The past existence of state-imposed discrimination, including school segregation, might, for example, also have contributed in some degree to decisions by individuals to discriminate in their social relationships, but this does not in itself necessarily convert what would otherwise be private discrimination into state action. Compare *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, and *Evans* v. *Abney*, 396 U.S. 435, with *Lombard* v. *Louisiana*, 373 U.S. 267, *Robinson* v. *Florida*, 378 U.S. 153, and *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715.

> should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage. It would not serve the important objective of *Brown I* to seek to use school desegregation cases for purposes beyond their scope although desegregation of schools ultimately will have impact on other forms of discrimination.

In our view, this case does not present sufficient evidence to warrant a finding that invidious state action has caused racial discrimination among the three school systems involved here. But if any inter-system violations are found we believe that, rather than utilizing the "broad brush" approach of requiring consolidation of separate school systems, any relief beyond the boundaries of the Richmond system should be tailored to fit the particular violation.

Thus, if state-imposed segregation between neighboring schools across school system lines is found, a desegregation plan between those schools might be warranted. If particular blacks are denied non-discriminatory access to housing in a particular residential area, the court might require that their children be given access to the schools in that area, or, more to the point, the court should join those responsible for housing discrimination and provide appropriate relief against them. If there is proof of an inferior curriculum or racially discriminatory allocation of funds or resources among the systems, there may be specific relief available in that area also. Cf. *San Antonio Independent School District* v. *Rodriguez*,

ra, slip op. at 51. But in none of the foregoing ex-
ples would the drastic remedy of consolida-
of the separate school systems be required. And the
ent record in this case supports the conclusion of the
rt of appeals that "it is not established that the racial
position of the schools in the City of Richmond
the counties is the result of invidious state ac-
* * * " (Pet. App. 582a–583a).

CONCLUSION

or the reasons stated above, the judgment of the
t of appeals should be affirmed.

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CAROLYN BRADLEY, *et al.*,
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REPLY BRIEF FOR PETITIONERS

Introduction

The Briefs of the petitioners and respondents and the Memorandum of the United States[1] exhibit marked dis-

[1] Throughout this Reply Brief, in addition to the abbreviations in citations previously employed by the parties (see the first footnote in each of the Briefs of the parties), the opening briefs and the government's memorandum will be identified as follows:

agreement in the framing of the decisive issues of this case. They are, however, in agreement upon a number of points. We devote this Reply Brief to a canvass of the agreements and disagreements, in the hope that, by focusing the controversy between the parties, we may facilitate the Court's resolution of it.

Petitioners and the United States are in substantial agreement as to the precise issue involved: whether the relief decreed constituted an abuse of the remedial powers of the District Court. (See U.S. Br. 2, 4.) However, both the respondents' characterization of the issue as one of "violation" and the manner in which they (and the United States) analyze the District Court's exercise of remedial discretion, create unwarranted confusion. The predicate of respondents' and the government's arguments—namely, that all vestiges of discrimination had been eliminated and that the Richmond, Henrico and Chesterfield school systems were "unitary" when these proceedings were brought—is demonstrably false on this record.

A. *The Issue of Constitutional Violation*

1. Respondents construct the major part of their argument upon the proposition that "before the federal judiciary can intervene in local school affairs the existence of a constitutional violation must be established by way of predicate for its action." (St. Br. 50.) Petitioners entirely agree. (See Pl. Br. 62-66; RSB Br. 91.) The disagreement between the parties concerns not the need for, but rather the identity of, the relevant constitutional violation in this case. (See Pl. Br. 57; RSB Br. 76-77.)

Brief for plaintiffs (Petitioners in No. 72-550) as "Pl. Br. ——"; Brief for the Richmond School Board (Petitioners in No. 72-549) as "RSB Br. ——"; Brief for the state and county defendants (Respondents in both cases) as "St. Br. ——"; and the government's memorandum as "U.S. Br. ——."

2. Petitioners and the District Court see the constitutional violation in relatively simple terms that respondents' brief strains to overlook. The violation is that the public schools of the Commonwealth of Virginia within the City of Richmond (as well as in the Counties of Chesterfield and Henrico) were racially segregated by law and by the purposefully segregatory acts of state and local officials, before 1954, in 1954, and for almost two decades thereafter. (See Pl. Br. 11-16, 64-66; RSB Br. 30-47, 67-70, 86-91.) Respondents' adamant refusal to talk about this long-continued, uncontestable *de jure* segregation does not make it go away. Respondents' silence on the score does not make it any less a constitutional violation, or *the* constitutional violation that underlies this protracted litigation. Hence, the only question confronting the District Court was how this enduring denial of fundamental constitutional rights could be effectively vindicated. This search for an effective remedy provides the lens through which all other aspects of this case must be viewed.

3. Much of the respondents' brief consists of an attempt to obfuscate this constitutional violation by the enumeration and refutation of a succession of *other* possible theories of "constitutional violation." (St. Br. 57-87.) Inasmuch as the enumerated theories are neither petitioners'[2] nor the District Court's, their refutation by respondents fails to join issues of any consequence. We agree with a great deal of what is said in these pages of respondents' brief, but not with its relevance to *this* case. The petitioners

[2] Respondents argue, based on evidence introduced to demonstrate the effectiveness and feasibility of a desegregation plan which crossed school division boundary lines—the only desegregation plan of this nature put before the District Court—not that the remedy is ineffective or impracticable, but that this evidence was elicited by the petitioners and employed by the District Court to establish constitutional violations.

have never maintained that any constitutional violation flows from the absence of a "viable racial mix" (St. Br. 58-61);[3] or from the mere fact that there are concentrations of blacks in Richmond and whites in Henrico and Chesterfield (St. Br. 61-72);[4] or from the mere proximity

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[3] We have never argued that the Constitution requires the assignment of any fixed or specific percentages of black and white children to a school or schools (see Pl. Br. 58-59; RSB Br. 76-77), and the District Court neither found nor ordered any such thing (see Pl. Br., App. A. 1a-5a; RSB Br. 50-51). Respondents here pursue their tactic, largely successful in the Court of Appeals (see Pl. Br. 50-51; RSB Br. 51-52), of confusing the reasons for the Richmond School Board's proposal of a particular form of inter-division desegregation plan (which included, quite properly, educational as well as constitutional considerations, see St. Br. 18-32) with the District Court's distinct reasons for concluding that some form of inter-division desegregation plan was necessary (which were, with equal propriety, entirely constitutional reasons). Respondents correctly note that the District Court quoted testimony of Dr. Pettigrew and other educational experts concerning a "viable racial mix" or enrollment proportion likely to remain stable (St. Br. 30-31). They ignore (1) that these quotations occur in the extensive "additional findings of fact as supplemental to [the District Court's] . . . general findings of fact" (338 F. Supp., at 116-230, Pet. A. 185-345), in which virtually all of the evidence in this voluminous record is recalled and appraised, rather than in the portion of the court's opinion describing the factual and legal bases of its constitutional ruling (338 F. Supp., at 79-116, Pet. A. 185-263); (2) that the District Court was necessarily concerned with the educational soundness of the Richmond School Board's plan, in addition to (not as a prerequisite of, see note 2 *supra*) its satisfaction of constitutional objectives (*e.g.*, 338 F. Supp., at 115, Pet. A. 262-63); and (3) that the District Court expressly held:

> While the viable racial mix contemplated by the plan is educationally sound and would indeed result in a unitary system, variations from the suggested viable mix may be unavoidable. All parties are admonished that it is not the intention of the Court to require a particular degree of racial balance or mixing. (338 F. Supp., at 230, Pet. A. 519-20).

[4] Petitioners need not claim, on this record, that "*[c]oncentrations of blacks in cities and whites in suburbs . . . of itself . . . [constitutes] a constitutional violation*" (St. Br. 61), or that the mere "*proximity of majority-black to majority-white schools . . . [affords] a constitutional violation*" (St. Br. 85). These contentions continue to be "as much beside the point in Richmond, Vir-

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of majority-black schools to majority-white schools (St. Br. 85-86);[4] or from the strong community of interest between

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ginia as it would have been beside the point in *Swann* to consider whether, without more, a State's use of the neighborhood school system violates the Constitution as applied to neighborhoods of differing racial concentration" (Pl. Br. 58; see *id.*, 57-61, 73-77). The close proximity of identifiably "black" and "white" schools on either side of the Richmond City boundary lines (Pl. Br. 8-10, 67, 86-87; RSB Br. 29-30), and the increasing concentration of blacks in the center-city ghetto of Richmond (Pl. Br. 30-35, 95-97, App. F, 1f-4f; RSB Br. 22-27, 68-70) were factors that added enormously to the difficulty of desegregating the Richmond area schools, and they were therefore properly considered by the District Court in its efforts to arrive at an effective desegregation plan. So, too, the District Court properly considered the prospect that a Richmond-only desegregation plan would hasten the conversion of the City into an all-black ghetto. (See Pl. Br. 30-33, 67-68, 96; RSB Br. 69-70.)

But these factors are not—and neither petitioners nor the District Court have ever asserted that they were—independent, isolated violations of the Constitution which alone justify the relief decreed. For this reason, respondents' invocation of *James* v. *Valtierra*, 402 U.S. 137 (1971) (St. Br. 69) as the response to extensive evidence of racial discrimination in housing in the Richmond area (see Pl. Br. 33-35; RSB Br. 38-44, 67-69) is wide of the mark. In the first place, it is not correct, as respondents imply, that the exclusion of blacks from housing in the counties is entirely a matter of the unavailability of low-cost housing. For example, the federally assisted, moderate rental multi-family housing which *is* located in the counties is virtually all-white (PX 129, 130). The District Court also could properly infer from the unrebuttted testimony of black witnesses (A. 461-67; 21 R. 42-49), the long-maintained racially discriminatory real estate advertising policies of Richmond newspapers (PX 42) and other evidence of pervasive racial discrimination (see generally, Pl. Br. 33-35) that Dr. Taeuber was correct in his testimony (A. 632) that the highly segregated nature of the greater Richmond community was not attributable solely to the effect of economics. And unlike respondents' assumptions that restrictive covenants ceased to affect housing patterns after 1950 (St. Br. 67), the District Court considered both expert testimony to the contrary (A. 736-39) and statements to the contrary by the President of the United States and the Assistant Attorney General (PX 90, 126). Thus housing discrimination—like the other forms of overt racial discrimination which this record establishes are pervasive in the Richmond area—could properly be considered by the District Court in projecting that a school desegregation plan

Richmond, Henrico and Chesterfield (St. Br. 71-72);[5] or from the failure of the respondents to offer an alternative plan of inter-divisional desegregation (St. Br. 84).[6] Largely

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limited to Richmond City would spawn exclusionary practices designed to keep blacks out of the counties. (See Pl. Br. 96-97.) But, in any event, the inability of blacks to find housing in the counties, whether it results from racial discrimination or from economic disadvantages (see Pl. Br. 91-93 n. 158), was an appropriate consideration for the District Court in determining the likely "effectiveness" (*Davis*, 402 U.S. at 37) of a Richmond-only plan to desegregate the area's schools. (See Pl. Br. 86-98; RSB Br. 70-72.) *Cf. Brewer v. School Board of Norfolk*, 397 F.2d 37 (4th Cir. 1968).

[5] Petitioners made no such argument, either below or in our original briefs. Significantly, respondents do not direct the Court to any portions of the District Court's opinion (see St. Br. 71-72), for there is nothing in that opinion which even remotely suggests "that a single community of interest in Richmond and the adjacent counties gives rise to a constitutional requirement" of an inter-division plan (St. Br. 71). Rather, the District Court quite correctly took account of the interdependence throughout the area in gauging the degree to which schools remained racially identifiable at the time of its decree and in weighing the feasibility of an inter-division plan. (See Pl. Br. 92-95; RSB Br. 62-64.)

[6] Petitioners' briefs noted that the Richmond Board's plan was the only inter-division plan put before the District Court, notwithstanding ample opportunity was afforded to all parties to submit alternative plans. (Pl. Br. 46, 61-62, App. B, 1b-3b; RSB Br. 47-48, 70-71.) Because a district court's approval of the only constitutionally adequate plan proposed by any party manifestly does not constitute an adoption by the court of that party's non-constitutional reasons for preferring the plan to other possibly constitutional alternatives, we had hoped that the respondents might appreciate the irresponsibility of confusing, on this record, (i) the Richmond School Board's educational objectives in selecting the plan, with the District Court's constitutional objectives in approving it (see Pl. Br., App. A, 4a), or (ii) the consolidation form of plan chosen by the school board for reasons of practicality (A. 240) with "any general assertion [by the District Court] of a sweeping power . . . to 'compel one of the States of the Union to restructure its internal government'" (Pl. Br. 61; see *id.*, App. B, 1b-3b). Respondents nevertheless persist in promoting both confusions—the first of which is the basis of their "viable racial mix" argument discussed in note 3 *supra*, and the second of which appears in their extravagant formulation of the political question-

uncontradicted evidence of these facts was properly considered by the District Court in determining that Richmond-only desegregation plans would not be effective and that the plan proffered by the Richmond School Board was the only alternative before the court holding out any promise of providing effective relief. But this evidence was not taken by the District Court to establish new and independent constitutional violations.

We agree in part and disagree in part with the last two propositions stated in respondents' needless and fruitless quest for a "constitutional violation." It is true that the *"failure" of "the State Board* [of Education] *. . . to consolidate the three systems . . . did not violate the Constitution,"* standing alone (St. Br. 79; *see id.*, 79-84). But the cooperation of Virginia's several educational authorities in numerous segregatory schemes that ignored local school division lines, while standing solidly upon those lines as bulwarks against desegregation, was, of course, one of the many means by which the Commonwealth historically promoted separation of the races in the public schools and resisted its termination. (*See* Pl. Br. 84-86; RSB Br. 64-66.) *"History does not afford a constitutional violation"* (St. Br. 73; *see id.*, 73-78) if viewed with the supercilious anachronism that mentions Virginia's "membership in the Confederacy during the Civil War" (St. Br. 73) and glosses disingenuously over everything that followed. But the recent history of Virginia's unremitting hostility and resistance to school desegregation (Pl. Br. 11-16, 18-22; RSB Br. 32-44) is plainly relevant both to the racial identifiability of disproportionately black schools today and to the choice of means necessary to disestablish

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Tenth Amendment argument advanced at St. Br. 103-04—while they erect and instantly demolish *"failure . . . to offer an alternative plan"* as an independent claim of constitutional violation. The claim is none of ours.

them. (See Pl. Br. 86-97; RSB Br. 77-91). To assert the contrary simply insults the intelligence of the Court as well as the sensibilities of a People brutalized by having to witness the entire governmental machinery and public life of a State committed overtly to resisting the constitutional command that they be treated decently and equally as American citizens.

4. Respondents, and the United States to a somewhat lesser degree, also seek to obscure and avoid the continuing constitutional violation by asserting that it does not warrant the relief fashioned by the District Court because the "three distinct school systems involved in this case are no longer dual systems; each is a unitary system" (St. Br. 52; see *id.*, 50-88).[7] Logically, this assertion begs the question, of course; factually, it ignores the specific, detailed findings to the contrary of the District Court (see Pl. Br. 42-44, 64-66; RSB Br. 12, 37-43, 69, 104-06) that all three school divisions, whether considered separately or together, remained segregated at the time when the county and state defendants were brought before the court and when relief against them was ordered;[8] legally, the argument rests

[7] The assertion by the United States that the District Court "assumed" or "presumed" that all three systems were operating unitary systems (U.S. Br. 2, 8, 9, 10) is negated by the very portion of the lower court's opinion cited by the government (338 F. Supp., at 104, Pet. A. 238), which is set out in full in text at p. 13 *infra*. Interestingly, the United States nowhere in its Memorandum itself advances the thesis that any of these school divisions had become "unitary" during this litigation. *Compare* U.S. Br. 7 n. 8, 17.

[8] Ordinarily, the existence of a legal violation or other condition giving rise to a cause of action is determined as of the time litigation is filed. *E.g., United States* v. *Board of School Commissioners of Indianapolis*, No. 72-1031 (7th Cir., February 1, 1973), slip op. at p. 13, *aff'g* 332 F. Supp. 655 (S.D. Ind. 1971); *United States* v. *Aluminum Company of America*, 148 F.2d 416 (2d Cir. 1945); *cf. United States* v. *W. T. Grant Co.*, 345 U.S. 629 (1953). As we pointed out in our opening briefs (Pl. Br. 64-66; RSB Br. 69),

upon a misrepresentation of the meaning of the District Court's findings as to Richmond,[2] and upon a misconception that HEW satisfaction with the belated desegregation plans for Henrico and Chesterfield also satisfied the Con-

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there is no issue as to an initial violation. And the Court of Appeals agreed that there was a continuing, unremedied violation at the time of joinder (see 462 F.2d, at 1065, Pet. A. 571-72). There was, therefore, no lack of power in the District Court to fashion an appropriate remedy. In any event, as the District Court found, racially segregated schools within each division had not been disestablished effectively even at the time the decree was entered.

[2] By isolating various portions of the District Court's August 17, 1970 opinion and April 5, 1971 opinion from their context, respondents seek (St. Br. 6-16) to convey the impression that the District Judge had been fully satisfied that an effective, operable plan for Richmond had eliminated all vestiges and effects of school segregation—and thereafter ordered the plan changed because he accepted educational, nonconstitutional justifications for the change. Study of the entire opinions demonstrates the inaccuracy of this characterization.

The District Court's August 17, 1970 comments regarding the estimated efficacy of the Foster Plan (St. Br. 14) were intended to emphasize the contrast between the relative effectiveness of the plaintiffs' plan and those which had theretofore been submitted by the Richmond School Board. It deserves emphasis that the court's remarks were made in the light of then governing law in the Fourth Circuit, *Swann* v. *Charlotte-Mecklenburg Board of Education*, 431 F.2d 138 (4th Cir. 1970), *rev'd* 402 U.S. 1 (1971); thus, the reference to "no intractible remnant of segregation in the City of Richmond" which could not be reached within a reasonable busing time.

These comments were made entirely without reference to, or consideration of, the question whether a plan which achieved the maximum feasible desegregation within Richmond might yet fail to fully satisfy the Constitution in light of the particular circumstances later developed on this record. No pleadings addressed to that issue were pending at the time of the court's ruling (an earlier motion to file a third-party complaint against the county school boards was withdrawn August 7, 1970 [A. 17, 19]); neither the counties nor the State Board (parties the District Court later held should be joined before the issue was decided) was yet represented in the litigation (see 36 R.; 51 F.R.D. 139, Pet. A. 48-57). With respect to the District Court's April 5, 1971 opinion, we detailed the explicit reservations delineated by the court in our opening briefs (Pl. Br. 38-39, n. 62; RSB Br. 10-11).

stitution.[10] But the more basic failing of respondents' approach is that it wholly misconceives the meaning of a "unitary" school system, and the time at which a formerly dual system can be said to have achieved a "unitary" character.

Green v. *County School Board of New Kent County*, 391 U.S. 430, 439 (1968) requires (1) consideration of all feasible alternative plans of desegregation; (2) selection of the option offering the greatest promise of effective relief; (3) evaluation in actual practice of the plan selected; and (4) its modification, or the selection of other alternatives, if evaluation demonstrates that the plan has proved ineffective to eliminate racially identi-

[10] While courts have often said the HEW guidelines are entitled to "great weight" in evaluating the progress of desegregation, *e.g.*, *Singleton* v. *Jackson Municipal Separate School District*, 348 F.2d 729 (5th Cir. 1965); *Kemp* v. *Beasley*, 352 F.2d 14 (8th Cir. 1965), the responsibility to adjudicate has never been abdicated to the administrative agency. *See Lee* v. *Macon County Board of Education*, 270 F. Supp. 859 (M.D. Ala. 1966); *Kemp* v. *Beasley*, *supra*, 352 F.2d at 19: "It is for the courts, and the courts alone, to determine when the operation of a school system violates rights guaranteed by the Constitution." Several factors in this case support the District Judge's determination to probe further than the proffered "HEW approval" of Henrico and Chesterfield schools. The exhibits referred to by respondents (St. Br. 10-12) respecting Henrico, for example, demonstrate that HEW's characterization of the system as "unitary" in 1969 (Ex. A. 97e) was no bar to the requirement by the agency of further desegregation measures in 1970 and 1971 (Ex. A. 99e, 103e). Furthermore, the District Court had reason to believe *in the light of this litigation* that HEW might be applying less stringent standards than the Constitution required. See 317 F. Supp., at 563-66, Pet. A. 13-20. The same conclusion has been reached by another district court in a lawsuit brought to compel compliance with the law by the agency. *Adams* v. *Richardson*, Civ. No. 3095-70 (D.D.C., November 16, 1972 [memorandum opinion], February 16, 1973 [order]). And in any event, the District Court found that vestiges of the dual system remained in each of the counties at the time of the hearing and that they were not "unitary" when its decree was entered.

fiable schools.[11] The notion of a "unitary" system was carefully explained in *Swann* in both conceptual and operational terms. Conceptually, it describes a system that has "achieved full compliance with this Court's decision in *Brown* I." (*Swann*, 402 U.S., at 31). Operationally, it describes a finding whose consequence is that a federal district court must dismiss a school desegregation case as closed and finished business. (*Swann*, 402 U.S., at 31-32.) But in light of *Green*, *Raney* v. *Board of Education*, 391 U.S. 443 (1968), and cognate cases,[12] it is perfectly plain that the finding of "unitary" character and consequent dismissal cannot come so soon as a plan has been

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[11] Thus unitary status is not achieved with initial selection of a plan, but only when it has been shown that the plan is fully effective in practice or that no feasible alternatives promising greater prospect of effective relief are available. As the District Court stated,

> Against this background the "desegregation" of schools within the city and the counties separately is pathetically incomplete. Not only is the elimination of racially identifiable facilities impossible of attainment, but the partial efforts taken contain the seeds of their own frustration. As before, and as courts have seen happen elsewhere and sought to prevent, racially identifiable black schools soon became almost all black; Richmond has lost about 39% of its white students in the past two years. Time and again courts have rejected half-measures as insufficient to fulfill school authorities' affirmative duty, well aware that otherwise the achievement will be only temporary. That school authorities may even in good faith have pursued policies leading to some desegregation and may in fact have achieved some results does not relieve them of the remainder of their affirmative obligation. *Clark* v. *Board of Education of Little Rock School District*, 426 F.2d 1035 (8th Cir. 1970). *If the existing assignment program, be it by freedom of choice, a pupil placement system, residential zoning, or some combination thereof, does not, upon consideration of alternative means, work effectively to abolish the dual system, it is legally defective.* [citations omitted] (338 F. Supp., at 103-04. Pet. A. 237-38). (emphasis added).

[12] *E.g.*, *Lemon* v. *Bossier Parish School Board*, 446 F.2d 911 (5th Cir. 1971); *Wright* v. *Board of Public Instruction of Alachua County*, 445 F.2d 1397 (5th Cir. 1971).

adopted which the District Court believes *will* finally satisfy constitutional requirements. The finding and dismissal must wait until the District Court has observed the operation of the plan in actual practice and has concluded that it is working in such a fashion that "'the goal of a desegregated, non-racially operated school system is rapidly and finally achieved'" (391 U.S., at 449).

Palpably, this stage had not arrived in any of the three school divisions—Richmond, Chesterfield *or* Henrico—at the time of the District Court's decree, *or* of the Fourth Circuit's reversal; nor has it yet arrived in any of the three divisions. Therefore, unless the explicit language of *Green*, *Swann*, and *Raney* is ignored, none of the three divisions can be called "unitary" or relieved of the continuing power of a federal court to modify and extend desegregation remedies as needed,[13] until full "unitary" status *is* achieved.

It was for this reason that the District Court properly concluded that the original constitutional violation of racially segregated public schools in the Richmond area had never been remedied and that the court was empowered and obligated to address its remedial process to that continuing violation with due recognition of the fact that the "maintenance of segregation in an expanding community . . . creates problems, when a remedy must eventually be found, of a greater magnitude in the present than existed

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[13] *E.g.*, *Hall* v. *St. Helena Parish School Board*, 417 F.2d 801 (5th Cir.), *cert. denied*, 396 U.S. 904 (1969) (freedom-of-choice); *Kelley* v. *Metropolitan County Board of Education*, 436 F.2d 856 (6th Cir. 1970), 463 F.2d 732 (6th Cir.), *cert. denied*, 409 U.S. 1001 (1972) (geographic zoning); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 453 F.2d 1377 (4th Cir. 1972) (feeder patterns).

t an earlier date . . . ." (338 F. Supp., at 91, Pet. A. 210). As the District Judge wrote:[14]

> The institution within the three existing school districts of something which might in some other context pass for desegregation of schools is a phenomenon dating at best from the opening of the 1971-72 school year, which took place during the trial of this case. Prior thereto each system was in some respect non-unitary, and the Court is not fully advised as to the current status of the county system[s]. Even were each existing system, considered in a vacuum, as it were, to be legally now unitary within itself, the question still remains whether state policy having the effect of preventing further desegregation and foreseeably frustrating that which has been accomplished to date may be imposed upon a very recently achieved desegregated situation. Momentary unitary status—*assuming it existed here, which has not been shown*—will not insulate a school division from judicial supervision to prevent the frustration of the accomplishment. (338 F. Supp., at 104, Pet. A. 238). (emphasis added).

The Issue of Remedy

l. Respondents apparently agree with petitioners that a constitutional violation is established upon this rec-l, the *power* of the District Court to remedy it by an erdivision desegregation plan is unquestionable. (See Br. 62-82.) We take this to be the meaning of re-ndents' passing immediately from the issue of "con-

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As noted above, see pp. 8, 12, note 11 *supra*, the District rt found as a fact that each of the school divisions was non-ary, and further that Richmond could not itself end its non-ary system because of the State's long delay in commencing pliance with *Brown*. (See Pl. Br. 88-100.)

stitutional violation" (St. Br. 50-87) to the "Factors to Be Weighed in Determining the Validity of the District Court's Remedy" (St. Br. 87; see *id.*, 87-104)—factors that are meaningful only as a matter of discretion, not of power. (See Pl. Br. 82-100.) And as we have noted above, the government states the issue solely in terms of discretion. (U.S. Br. 2.)

2. The arguments of both respondents and the United States addressed to remedy are predicated upon their contention that the District Court approved an inter-division desegregation plan for the sole purpose of achieving a viable racial mix. (See, *e.g.*, St. Br. 88, 96, 104; U.S. Br. 2, 9, 11, 17, 21.) We have previously considered this assertion in note 3 *supra*. We reiterate the point here because of the pivotal position accorded to the notion by respondents and the government.

The District Court was concerned—as a reading of its *entire* opinion or the *entire* section containing its general findings and legal conclusions (338 F. Supp., at 79-116, Pet. A. 185-263) will readily make clear—with the *effectiveness* of a *remedy* for the long-continued constitutional violation.[15] Having evaluated in successive, actual operation (1) the freedom-of-choice plan, (2) the interim plan, and (3) Plan III, the court ultimately concluded that inter-division assignments provided the only realistic means to eliminate the persisting racial identifiability of the schools.[16]

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[15] The respondents' and government's briefs, focusing as they do on the non-issue of "violation," ignore entirely any discussion of the effectiveness of the various plans that were put before the District Court.

[16] The United States suggests that the District Court engaged in circular reasoning by making an initial arbitrary determination to look outside Richmond in measuring racial identifiability and then deciding that an effective means of eliminating that identifiability would require pupil reassignments outside Richmond. (See U.S.

The strenuous efforts of the respondents and the United States to rewrite the District Court's opinion (see note 3 *supra*) are ultimately futile.[17]

3. Most of the other factors discussed by the respondents as bearing on the District Court's exercise of discretion have been canvassed in our principal briefs and need not be rehashed here. To the extent that they do not ignore or go beyond the record,[18] respondents essentially substitute their own factual or judgmental conclusions for those of the District Court, and thereby seek impermissibly to

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Br. 13-15.) The government overlooks the facts that the District Court was concerned with: (i) the many traditionally black Richmond schools which had never been effectively desegregated, under free choice, the interim plan or Plan III, and which therefore presumptively retained their racial identities (see Pl. Br. 5-6, 11-13, 43, 89-90; RSB Br. 24-25, 36-37, 69); (ii) the evidence reinforcing that presumption of identity, i.e., the testimony defining the nature of racial identifiability and how it is perceived (see Pl. Br. 67, 86-100; RSB Br. 62-64); (iii) the evidence indicating the permeability for all other community concerns of the city-county boundary lines (see Pl. Br. 25-29, 94-95; RSB Br. 15-22); and (iv) the evidence indicating that the lines were freely crossed by the community's *educators* for valid educational purposes and had been so crossed in the past for the invalid purpose of segregation (see Pl. Br. 22-24, 29, 84-86, App. E, 1e-5e; RSB Br. 64-67, 77-82). It was this complex of factors and not an arbitrary preference for majority-white schools which led the District Court to explore "racial identifiability" in the context of the greater Richmond area.

[17] The distortion of the District Court's opinion required by these efforts is indicated by the Fourth Circuit's comment that the District Court "apparently adopt[ed] Dr. Pettigrew's viable racial mix theory," 462 F.2d, at 1063 n. 4, Pet. A. 568. That is simply not supported by a fair reading of the District Court's general findings and conclusions of law (338 F. Supp., at 79-116, Pet. A. 185-263).

[18] *Compare, e.g.*, St. Br. 89-90 with Pl. Br. 30-33, 90-97, App. F, 1f-4f, *and* RSB Br. 22-27, 69-70, 107-08; St. Br. 92-98 *with* Pl. Br., App. C, 1e-3e, App. D, 1d-3d, App. E, 1e-5e, *and* RSB Br. 32-34, 48-50; St. Br. 98-100 *with* Pl. Br. 22-23, 47-48 n. 67, 68-69 n. 100, *and* RSB Br. 52-53, 79 n. 75; St. Br. 100-02 *with* Pl. Br. 83 n. 135, App. D, 2d-4d, *and* RSB Br. 106-07.

upset that court's "broad discretionary power" in "shaping equity decrees." [19]

4. One point only at St. Br. 87-104 and U.S. Br. 17-21 seems to us to call for a reply. This is the assimilation of *San Antonio School District* v. *Rodriguez*, 41 U.S.L.W. 4407 (U.S., March 21, 1973), to respondents' own conception of "local control." (St. Br. 92-93; U.S. Br. 20-21.) We have already pointed out at Pl. Br. 22-24, 84-86, App. E, 1e-5e; RSB Br. 64-67, 77-82, that "local control" in Virginia is an accordion which collapses or expands as required to pipe the tune of racial segregation and resistance to desegregation in the public schools. For the one thing that is clear on this record is that from 1870 to the time of the District Court's decision, with respect to racial matters all school divisions either acceded to the directives of, or surrendered control to, state authorities. We have also noted that, to the extent that "local control" is a real concern and is not "racially based" (see Pl. Br. 85, n. 137; RSB Br. 78, n. 73), it is amply accommodated by the specific provisions of the Richmond School Board plan approved by the District Court.[20]

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[19] *Lemon* v. *Kurtzman*, 41 U.S.L.W. 4467, 4469 (U.S., April 2, 1973, opinion of the Chief Justice).

[20] See Pl. Br., App. C, 1c-3c, App. D, 1d-3d, App. E, 1e-5e; RSB Br. 32-34, 48-50. To summarize, consolidation was preferred by the Richmond School Board in part because it allowed greater local control than inter-division assignment pursuant to contract. (338 F. Supp., at 84, 191, Pet. A. 195, 430; see Pl. Br. 61-62; RSB Br. 49-50.) *Cf. Wright* v. *Council of the City of Emporia*, 407 U.S. 451, 454-55 (1972). The Board's plan also provides for the creation of six administrative subdivisions, each with its own local board to which are delegated decision-making powers over various curricular and administrative matters—the very method which has proved effective in Fairfax County, Virginia. (See 338 F. Supp., at 191-92, Pet. A. 430-31; Pl. Br. 47-48, App. D, 3d; RSB Br. 49, 106.) Respondents' assertions of financial difficulties must

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5. We address finally respondents' argument that "[t]his Court must not say that black majority schools are intrinsically inferior or that black majority schools impose a feeling of inferiority on those black students who attend them" (St. Br. 48; see *id.*, 75-78, 85-86). The argument would lie better in the mouths of persons who had not penned black children into segregated schools during decades before and after *Brown*, and who now advance it in the service of perpetuating that same segregation. The sly suggestion that "it is the N.A.A.C.P." (St. Br. 76; *sic*) which has latterly invented the inferiority and degradation of the Southern "black" school requires neither analysis nor response. It is a patent outrage.

In *Brown*, after noting the finding of the lower court in the Kansas case that "segregation of white and colored students has a detrimental effect upon the colored children [and that the] . . . impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group . . . ", this Court stated:

> Whatever may have been the extent of psychological knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority. Any language in Plessy v. Ferguson contrary to this finding is rejected.

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be weighed against the total lack of any such problems in the administration of joint and regional schools throughout Virginia for many years (see Pl. Br. 22-23; RSB Br. 64-65), in light of the existence of state laws dealing specifically with the allocation of financing responsibility in a consolidated school system (see Pet. A. 611-12, 621; Pl. Br. App. D, 3d; RSB Br. 106-07), and in light also of the present power of state officials to require levels of expenditure sufficient to meet state-mandated minimum standards of educational quality (see Pet. A. 621-22; Pl. Br. App. C, 1c n. 1c, App. D, 3d-4d).

Respondents and the government apparently seek to cast doubt on the continued vitality of this finding through general and vague reference to a body of contemporary educational research (St. Br. 76-77; U.S. Br. 11). The relevance of their assertion to this case is dubious at best since this Court has never held it a prerequisite to relief dismantling a dual school system that black plaintiffs demonstrate they have suffered specific psychological harm in segregated schools or will make specific gains in integrated schools. The assertion also disregards, of course, the abundant testimony in this record, credited by the District Court, supporting the conclusion that racially identifiable schools do harm black children. (See RSB Br. 83-87.)

In any event, the implication that current educational research is at odds with the finding of *Brown* does not stand examination. Indeed, every major study conducted since 1954 supports and reinforces the conclusion that racial segregation in the public schools adversely affects the motivation and educational development of black children.[21]

Some researchers have questioned past assumptions that public schools are a principal instrument for establishing equality of status and condition. Some have challenged the notion that there is a demonstrable correlation between educational expenditures and the quality of education. See authorities cited in *San Antonio School District* v. *Rodriguez*, 41 U.S.L.W. at 4420. All, however, agree that racial composition of the classroom is a critical school factor in determining educational outcomes.[22] HEW's most recent

[21] See Office of Education, *Equality of Educational Opportunity* [The Coleman Report] 302-10 (1966); U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 96-114 (1967); Mosteller and Moynihan (Eds.), *On Equality of Educational Opportunity* 41 (1972); Jencks et al., *Inequality* 102, 109 (1972).

[22] Jencks, for example, concludes that the elimination of "racial and socio-economic segregation in the schools might reduce the test

port on the subject, after reviewing evidence compiled in veral communities, summarizes the findings as follows:

> "[E]vidence of gains [through desegregation] combined with the absence of alternative educational strategies with demonstrated superior effectiveness, suggests the high educational importance for desegregation in improving black academic achievement . . ." (Department of HEW, The Effectiveness of Compensatory Education, Summary and Review of the Evidence 176 (1972)).

Practical experience in communities that have desegre-ted their schools supports the research findings that de-gregation is beneficial and negates the veiled suggestion at the plan approved here may be politically unworkable. two 1972 studies covering fourteen school districts that d implemented desegregation plans, the U.S. Commis-on on Civil Rights found that students "have adjusted ickly and smoothly to the new school environment, often spite fears and anxieties of their parents," that "school segregation had begun to make inroads on the entrenched cial isolation and hostility with which most pupils and achers confronted each other in segregated systems," that mmunities had taken action often vigorous and creative to ad off problems, and that there was "widespread accept-ce of desegregation by those most intimately involved in e educational process—the students and the teachers." [22]

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re gap between black and white children and between rich and or children by 10 to 20 percent." See also "Perspectives on equality," 43 *Harvard Educational Review* (No. 1) at 39 ff. (February, 1973).

[22] U.S. Commission on Civil Rights, *Five Communities: Their arch fo Equal Education* 1-2 (1972); U.S. Commission on Civil ghts, *The Diminishing Barrier; A Report On School Desegrega-n in Nine Communities* 1-3 (1972). The fourteen communities

In sum, the issue in this case, as the government acknowledges, is a constitutional one. The research findings of educators and sociologists were relevant only as considerations for the district court to weigh in determining the most appropriate form of relief after finding a constitutional violation. The government's suggestion that the courts are being asked to choose among "various educational and sociological theories" (U.S. Br. 12) is a smoke screen.

We submit that the scope of remedial discretion should still be defined in terms of the feasibility of available alternatives, and that on this record inter-division assignments have been established as feasible, workable and educationally sound. The use of inter-division assignments as a desegregation tool in this case will provide the only means of avoiding the stark reality of black schools in Richmond, and white schools in Henrico and Chesterfield. Yet such assignments may be effected without expanding the time or distance of pupil transportation presently afforded within the individual school systems.

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included several, e.g., Charlotte-Mecklenburg, Tampa-Hillsborough, whose plans are similar to the plan adopted in this case. Experience with a desegregation plan implemented in January, 1973 in Prince Georges County, Maryland, the tenth largest school district in the nation, has also been positive. See, e.g., Washington *Star-News*, February 13, 1973, p. B-1.

CONCLUSION

For the foregoing reasons, and those set out in the principal briefs of the petitioners, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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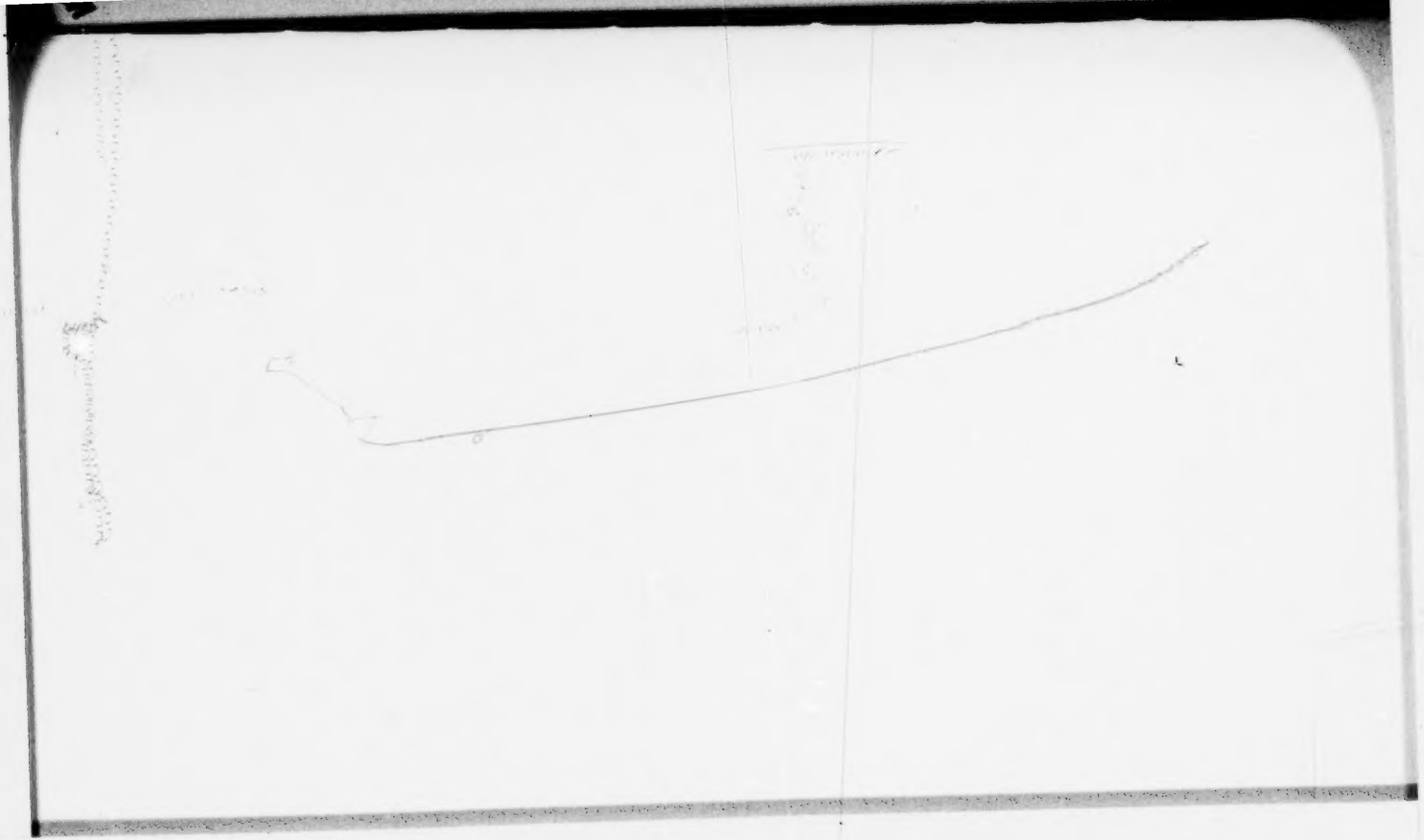

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-550

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Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* ON BEHALF OF BLACK PARENTS OF ATLANTA, GEORGIA IN SUPPORT OF PETITIONERS, AND BRIEF *AMICI CURIAE*

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v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* ON BEHALF OF BLACK PARENTS OF ATLANTA, GEORGIA IN SUPPORT OF PETITIONERS

The individual plaintiffs in the case of *Emma Armour, et al.*,[1] v. *Jack P. Nix, et al.*, No. 16,708, Northern

[1]Emma Armour, Mattie Benns, Margaret Chelsey, Mary Clark, Mary Collins, Verna Collins, Eva Davis, Gloria Dixon, Mamie Dixon, Sallie Heard, Flora Hudson, Coy Lackey, Gloria Lawrence, Gwendolyn Lee, Ethel Matthews, JaNelle McCrary, Edward Moody, Bobbie J. Moore, Anna F. Pyles, Sara Reynolds, Evelyn Taylor, Lula Mae Trice, Hazel Tolbert, Mattie R. Weems, Margaret Welch, Elaine Wimbish, individually and on behalf of the class.

District of Georgia, move for leave to file a brief *amici curiae* in this case.

Amici are black parents whose children attend the Atlanta public schools. On June 7, 1972, they filed a class action seeking an order which would eliminate the existing segregated education in the Atlanta metropolitan area schools by providing a plan for the integration of such schools without regard to the limitations of city and county lines. Proceedings in *Armour* v. *Nix* have been stayed pending a decision in this case by this Court. A decision by this Court on the question of the power of district courts to order desegregation plans traversing political boundary lines will directly affect the outcome of *amici's* pending case.

Amici believe this Court should be cognizant of the possible impact of its decision in this case on other urban areas which embrace several local political units such as metropolitan Atlanta. It is believed that this brief will be of assistance to the Court in fashioning an appropriate remedy for Richmond and other urban communities with similar situations.

For these reasons, leave is respectfully requested to file the within brief *Amici Curiae*.

Respectfully submitted,
MARGIE PITTS HAMES
Attorney for Movants

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-550

CAROLYN BRADLEY, et al.,

Petitioners,

v.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF *AMICI CURIAE* ON BEHALF OF BLACK PARENTS OF ATLANTA, GEORGIA IN SUPPORT OF PETITIONERS

OPINIONS BELOW

The opinions of the Court of Appeals for the Fourth rcuit are reported at 462 F. 2d 1058 and the opinion the United States District Court for the Eastern strict of Virginia is reported at 338 F. Supp. 67.

JURISDICTION

The petition for a writ of certiorari was granted on January 15, 1973. The Court's jurisdiction rests upon 28 U.S.C. §1254(1).

INTEREST OF AMICI CURIAE

Amici are plaintiffs in a class action pending in the Northern District of Georgia, *Armour* v. *Nix*, No. 16708 (hereafter the "metro case" or the "*Armour*" case), in which the issue is the federal court's power to remedy racial discrimination in the public schools by ordering desegregation across the boundary lines of political units.

ARGUMENT

A. THE POLITICAL BOUNDARY LINES OF CITIES AND COUNTIES ARE BARRIERS TO ACHIEVING MEANINGFUL INTEGRATION IN METROPOLITAN ATLANTA AND OTHER URBAN AREAS.

Atlanta's public schools approach 80% black enrollment. They are completely surrounded by a ring of white suburban schools (eight systems with 90 to 97% white enrollment). No meaningful desegregation plan can be developed within the confines of these separate units and the mandates of *Brown* v. *Board of Education*,[1] will remain thwarted unless the political boundary lines of these systems can be traversed by a desegregation order.

[1] 347 U.S. 483 (1954).

A map showing the location of each school in the five county area is inserted here because it vividly shows the concentration and isolation of black students within the Atlanta city boundaries.[2] Red dots are schools with 90% or more black enrollment, black dots are 90% or more white schools, and green dots are all others, so called "integrated schools."

Upon locating the Atlanta city lines, it can be immediately observed that there are many white schools just across that line in all directions (even within walking distance) from the numerous Atlanta black schools. The geography of the area and school locations provide many opportunities for pairing schools, a technique of little value now because of the boundary line barrier.

The Atlanta metropolitan area is made up of five county and four city educational systems. Each of the nine systems is a defendant in the metro case, *Armour* v. *Nix, supra*. There is a total of 324,178 students enrolled in the nine systems, of which 29% are black. The 1972-73 racial school enrollment data by system is set out below:

[2]Atlanta is partially in Fulton County and partially in DeKalb County. That portion of Atlanta which lies in DeKalb County is to the west of Decatur and east of the north-south county line near the center of the map. All other city systems are wholly within one county.

1972-73

System	No. of Schools	White	Black	Other	Total	Percentage White	Percentage Black
Atlanta (City)*	153	21,683	73,985	338	96,006	23%	77%
Fulton County	74	30,853	3,560	171	34,584	89%	11%
Decatur (City)	10	1,172	2,767	7	3,946	30%	70%
DeKalb County	102	77,466	8,308	345	86,119	90%	10%
Marietta (City)	10	3,963	1,135	0	5,098	78%	22%
Cobb County	57	45,474	1,295	274	47,043	97%	3%
Buford (City)	3	804	338	6	1,148	70%	30%
Gwinnett County	27	19,911	743	54	20,708	96%	4%
Clayton County	32	27,959	1,437	130	29,526	95%	5%
City Systems	176	27,622	78,225	351	106,198	26%	74%
County Systems	293	201,663	15,343	974	217,980	93%	7%
TOTAL METRO	469	229,285	93,568	1,325	324,178	71%	29%

*Updated Atlanta data show 19,655 white students, 73,046 black students; 21.1% White and 78.5% Black as of April 4, 1973.

**The information from this chart is taken from the Summary Tables, *School Desegregation in Metro-Atlanta* 1954-1973, pp. 28-29 (Research Atlanta, 1973), hereafter cited as "Research Atlanta". Copies of this publication will be filed with the Clerk of this Court.

The foregoing chart shows that 79% of all black students in the nine systems attend Atlanta schools, i.e., 73,985 of a total of 93,568. Of that number, 60,117 attend 46 all-black schools and 39 schools that have 90% or more black student enrollment. For these students, the constitutional concepts of *Brown* remain a hollow mockery nearly twenty years after their pronouncement. Of the total 22,021 Atlanta white students, 7,345 attend 20 schools that are 90% or more white student enrollment.[3] Thus, 67,522 Atlanta students (or 70%) attend racially identifiable schools (using 10%, a very conservative percentage for the criterion of racial "identifiability"). The percentage of students attending racially identifiable schools in the county systems is even greater, namely, 84%, however that percentage attends almost exclusively white schools.

B. THE POLITICAL BOUNDARY LINES HAVE BEEN A BARRIER TO THE DISTRICT COURT IN DEVISING DESEGREGATION PLANS FOR THE ATLANTA AREA.

HISTORY

Atlanta City

The first integration suit[4] in the Atlanta metro area was filed against the Atlanta Board of Education in January, 1958. By Court order (delayed one year), grades 11 and 12 were "integrated" in 1961 by approval of 9 out of 130 applications for transfers of black students to four white schools.[5] This was the first Atlanta integration effort in response to the 1954 *Brown* decision (the 1961 plan called for one grade each year).

[3]Research Atlanta, p. 36-38, 1972-73 enrollment data.
[4]*Calhoun* v. *Latimer*, now captioned *Calhoun* v. *Cook*.
[5]Research Atlanta, p. 4.

In 1965, the district court ordered all grades desegregated by 1967-68 through a "freedom of choice" plan. Because of the failure of the freedom of choice plan to desegregate the schools, the district court in 1970 ordered the Atlanta system to pay for transportation of students desiring to transfer under a "Majority to Minority" voluntary transfer plan.[6] Since that time, the district court has twice found the Atlanta system unitary and has been twice reversed by the Fifth Circuit Court of Appeals. Worthy of note here is the district court's observation of futility in trying to devise a plan for only the Atlanta system in its July, 1971, decision, *Calhoun* v. *Cook* 332 F. Supp. 804 (N.D. Ga. 1971). The district court in 1971 proposed consolidation with at least the Fulton County system as a partial solution to Atlanta's problem. Judge Sidney O. Smith wrote:

> Looking ahead, the court is compelled to note that the critical point for public education in the City of Atlanta and its environs has been reached. The situation calls for a sweeping examination of its relationship to housing, planning, finances, rapid transit and all the other external factors which vitally affect its role in the community. Apparently, no serious effort has been expended on the question of consolidation of the Atlanta system with the Fulton County system. In terms of efficiency, taxes, and quality education, such consolidations normally produce long-range improvements. In terms of the current problem, such consolidation might well produce partial, even though not perfect, solutions. . . . Short of such critical reevaluation, the Atlanta system faces a difficult task in merely "hanging on" to its present position, awaiting the uncertain reversal of white flight from its limits.

[6]Approximately 2,000 students have transferred to other schools under this plan. Research Atlanta p. 33.

In reversing the basic holding in that case, the Fifth Circuit ordered that the district court permit the *Calhoun* plaintiffs to propose an Atlanta integration plan and, further, directed the Court to make findings of fact and conclusions of law on the question of "consolidation" which had been proposed by the district court (451 F.2d 583). The district court has not yet pursued the second directive except for one hearing in conjunction with the metro case. As a result of that hearing, all proceedings in the metro case and the *Calhoun* consolidation issue were stayed pending the outcome of the Richmond, Denver, and Detroit cases.[7] In a recent appeal, the Fifth Circuit specifically ruled that its directives to develop an Atlanta plan did not affect its prior directive to the district court to decide the "consolidation" issue.[8]

A compromise plan negotiated by some black parents and the Board of Education was ordered implemented, April 4, 1973, in Atlanta, *Calhoun* v. *Cook*, ____ F. Supp. ____ (N.D. Ga. 1973) (No. 6298). That plan will leave 83 schools with more than 90% black students. In this recent ruling, the district court also specifically reserved the question of consolidation for future determination. Thus, the issue of whether political boundary

[7] *Armour* v. *Nix*, No. 16708, N.D. Ga. order dated November 17, 1972; *Bradley* v. *School Board of Richmond*, 324 F.Supp 396 (E.D. Va. 1971), *rev'd*, 462 F.2d 1058 (4th Cir. 1972), *cert. granted*, ____ U.S. ____ (1973); *Keyes* v. *Denver School District No. 1*, 445 F.2d 990 (10th Cir. 1971), *cert. granted* 404 U.S. 1036 (1972), argued October 12, 1972; *Bradley* v. *Milliken*, 345 F.Supp 914 (E.D. Mich. 1972), aff'd 433 F.2d 897 (6th Cir. 1972), heard *en banc* February 8, 1973.

[8] *Calhoun* v. *Cook*, order dated October 6, 1972. Plaintiffs in *Armour* v. *Nix* do not necessarily advocate consolidation in a strict sense. They advance the federation approach, namely, a joint operation of schools leaving all local boards of education intact and the creation of a "metro board" from the local board membership.

lines may be crossed in developing future plans for desegregating the metro Atlanta schools awaits a ruling by this Court.

Fulton County

A 1969 case, *Hightower* v. *West*, 430 F.2d 552 (5th Cir. 1970), resulted in an integration order for the Fulton County system. Of the 72 schools in the system, 15 are all white and 37 are 90% or more white. There remain three schools 90% or more black and two schools 80% or more black. Total student enrollment is 31,024 white and 3,560 black.[9] Reference is made to the metropolitan area map which shows a cluster of all white schools in Fulton County just south of the Atlanta City limits.

Decatur City

The case of *U.S.* v. *Georgia*, 466 F.2d 197 (5th Cir. 1972), involved 81 school systems, including the Decatur City system. An order was issued in August 1972, directing Decatur to develop a plan of desegregation. No plan has been approved or implemented. Of the eleven schools, four are 90% or more black, three are 90% or more white. The system has 2,767 black students and 1,179 white students.[10]

DeKalb County

In 1969 the DeKalb County Board was ordered to desegregate its schools, *Pitts* v. *Cherry*, N.D. Ga. No. 11946. Of the 107 schools, two are 90% or more black and four are more than 50% black student enroll-

[9]Research Atlanta, p. 44-45.
[10]*Id.*, p. 44.

ment. Twenty-nine schools are 100% white and 49 schools are 90% or more white. This is the second largest system in the metro area with 77,811 white students and 8,308 black students.[11]

Cobb County

There has been no desegregation case involving the Cobb County systems. The county has 97% white student enrollment. Of its 57 schools, 53 are 90% or more white (including 15 all white). Three schools have up to 15% black enrollment and one has 23% black enrollment.[12] Reference to the map will reveal many white schools just across the Atlanta city line in South Cobb County. Again, this shows very real possibilities for use of the pairing technique with the concentration of black schools in west Atlanta.

Marietta City

No suit has involved the Marietta system. The black student population of Marietta approximates 30%.[13] With only a few exceptions, each school's enrollment reflects this percentage. Reference to the map reflects that several schools just across the city line, however, are 90% or more white.

Gwinnett County

Of the 26 schools, 25 are either all white or 90% or more white; the other one is approximately 30% black.[14]

[11] *Id.*, p. 42-44. This is a major residential community.
[12] *Id.*, p. 40-41.
[13] *Id.*, p. 46.
[14] *Id.*

Buford City

This system has only three schools and each reflects approximately the system's one-third black student enrollment.[15]

Clayton County

Of the 32 Clayton County schools, 28 are all white or have 90% or more white students. The other four have from 11 to 20% black enrollment.[16] An order to desegregate one predominantly black school was entered in *U.S.* v. *Clayton County Board of Education*, 331 F.Supp. 466 (N.D. Ga. 1971). The map shows many of the white schools are located just over the city line in a cluster with other Fulton County white schools all of which provide pairing possibilities not available when desegregation efforts are confined by political lines.

* * *

In the nine systems, the Atlanta City system had annually increased in both black and white enrollment until 1961 (the year nine black students integrated the schools) when the white student enrollment trend reversed. White enrollment began at 50,673 in 1951-52 and went from a high of 55,249 in 1959-60 to 22,021 at the beginning of 1972-73 school year (now 19,655 as of April, 1973). Black student enrollment for the same period increased from 23,674 to 73,985 in 1972-73.

The Decatur City system has also lost white students in large numbers and the black enrollment has grown in numbers and percentage (from 19.4% in 1951-52 to 70% in 1972-73).

[15] *Id.*, p. 40.
[16] *Id.*

Marietta City schools have had some decrease in the number of white student enrollment and an increase in black percentage.[17]

The five counties have annually had substantial increases in white enrollment. A chart showing the school enrollment in the nine systems since 1951 is included herein as Appendix A. A chart which shows general population data from the 1950, '60 and '70 census is included as Appendix B.

The political boundary lines of the counties and cities have served to isolate black students in the city schools and prevent any meaningful desegregation of the schools.

C. WHERE THE RIGHT TO EQUAL EDUCATION OPPORTUNITIES HAS BEEN DENIED BY A LONG HISTORY OF *DE JURE* SEGREGATION, ACTION BY GOVERNMENTAL AGENCIES OTHER THAN SCHOOL BOARDS TO PRESERVE SEGREGATED SCHOOL SYSTEMS THROUGH THE USE OF EXISTING POLITICAL BOUNDARIES IS SUFFICIENT STATE ACTION TO JUSTIFY A FEDERAL COURT DESEGREGATION ORDER WHICH CUTS ACROSS SUCH BOUNDARIES.

The majority opinion in the Fourth Circuit below rests essentially on a failure to find state action which was intended to achieve, or had the effect of achieving, the marked racial concentration of the Richmond city school system and those of the surrounding counties.

[17]The phenomenon of black concentration in the city areas is largely traceable to county failure to build public housing. See *Housing All Atlantans Subsidy Programs*, Atlanta Regional Metropolitan Commission, 1970.

Amici agree with Judge Winter that such a current causal linking should be unnecessary when the efforts of a federal court (and local school authorities) to eradicate the effects of one hundred years of *de jure* segregation are frustrated by the happenstance of existing boundaries of political subdivisions within an otherwise cohesive metropolitan area. In a *de jure* situation, particularly one aggravated by the deliberate delay of the Richmond school authorities described by Judge Winter, it is difficult to justify a denial of the federal constitutional rights afforded by *Brown* on the basis of considerations of federalism.

Assuming, however, that current state action intended to preserve segregated schools, or having that effect is a necessary prerequisite in *de jure* metropolitan area integration cases, clearly it is not only action of school boards which would satisfy this requirement. It could hardly be argued that a state legislature could subdivide counties or cities to preserve a racially identifiable school system without this constituting state action. *U.S.* v. *Scotland Neck Board of Education*, 407 U.S. 484 (1972).

Amici are not in a position to comment upon the existence or non-existence of actions or inactions by authorities in Henrico and Chesterfield Counties which might be considered state action which denied equal educational opportunities. The majority in the Fourth Circuit opinion stated that whatever action the Henrico and Chesterfield Counties took to keep blacks out, it was "slight indeed" compared to the myriad of reasons for concentration of black persons in Richmond and such did not support the conclusion that it had been "invidious state action" which had resulted in the racial

composition of the three school systems. The court further observed:

> Indeed this record warrants no other conclusion than that the forces influencing demographic patterns in New York, Chicago, Detroit, Los Angeles, Atlanta, and other metropolitan areas have operated in the same way in the Richmond metropolitan area to produce the same result.

The inclusion of Atlanta in this generalization by the Court was erroneous. *Amici* believe that this Court's attention should be directed to federal court decisions which indicate that state action, indeed not slight, has caused the racial isolation in the City of Atlanta. As recently as 1970 Fulton County was found to have violated rights of prospective public housing tenants (a class composed of 88% to 90% blacks) by resisting attempts to build public housing projects in the unincorporated area outside Atlanta, i.e., that area served by the Fulton County Board of Education.[18]

In *Crow* v. *Brown*, 332 F. Supp. 382 (N.D. Ga. 1971), *aff'd* 457 F.2d 788 (5th Cir. 1972), Fulton County's official interference in denying public housing building permits and Atlanta's policy of building most of its public housing within 8 of Atlanta's 132 square miles led the court to conclude that such state action caused "racial concentration in a compacted area [in Atlanta]. One of the consequences of this racial concentration is that it has become virtually impossible to achieve meaningful school desegregation. . . ."

[18]In the Fulton County school desegregation case, the segregated schools were characterized by the Fifth Circuit as "the product of residential segregation and, historically, the location of schools to serve a segregated community." *Hightower* v. *West*, *supra*, at 555.

In twice finding the Atlanta school system unitary, the district court has cited local segregated housing policies as the reason for Atlanta's segregated schools. Further, it has found that the housing patterns are attributable to local and other official actions, stating:

> Federal agencies including the F.H.A., a number of federal financial regulatory agencies, the public housing administration, plus local agencies administering their programs, have engaged in a broad pattern of affirmative acts to promote racial housing segregation in Atlanta and its suburbs. . . .[11]

Thus, the district court in Atlanta and the Fifth Circuit have clearly ruled that Atlanta's segregated schools are the product of segregated housing and the segregated housing patterns have been caused by governmental actions—not unknown forces. If this Court agrees with the Fourth Circuit that something in addition to historical *de jure* action or inaction is required to justify a cross-political boundary line desegregation order, then this Court should clearly recognize that indirect and sometimes subtle actions by authorities other than school boards cause the racial concentration or isolation and that such action should be sufficient to warrant a cross-political boundary line desegregation order. Despite the evidence, or absence thereof, as to state action causing the segregated housing patterns in Richmond, such should not be conclusive on the question of remedy because state action has already been adjudicated by the district court as the causative factor leading to Atlanta's segregated housing

[11] *Calhoun* v. *Cook*, ___ F.Supp. ___ (N.D. Ga. 1972). See also prior decision 332 F.Supp. 804 (N.D. Ga. 1971). The best statement of the dillema facing the Atlanta Board of Education is found in its application to stay the Fifth Circuit order of October 6, 1972, filed in this court October 25, 1972.

and schools. Without the cross-political line remedy, the system of racially indentifiable schools described herein will continue to exist in metropolitan Atlanta and other urban areas.

CONCLUSION

Amici urge the Court to reverse the Court of Appeals and find that the federal courts may cross local political boundary lines where necessary to enforce the federal constitutional rights declared in *Brown*.

Respectfully submitted,

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APPENDIX A

ATLANTA METROPOLITAN SCHOOL ENROLLMENT 1951-1973

Year		*Atlanta*	*Fulton*	*Decatur*	*DeKalb*	*Cobb*	*Marietta*	*Buford*	*Gwinnett*	*Clayton*
1951-2	%	31.8%	16.2%	19.4%	12.7%	6.1%	15.1%	*	10.4%	19.0%
	black	23,674	3,014	729	2,294	685	719		833	1,053
	white	50,673	15,480	3,019	15,749	10,393	4,040		7,135	4,481
1953-4		32.1%	14.8%	19.7%	10.4%	4.4%	15%	23.6%	7.9%	17.0%
		27,305	2,953	838	2,408	622	889	212	611	1,171
		57,551	16,909	3,396	20,698	13,305	5,036	686	7,053	5,686
1955-6		34.4%	14.5%	19.9%	9.2%	4.9%	15.2%	21.4%	7.3%	14.7%
		32,494	3,194	892	2,794	830	901	217	622	1,317
		61,982	18,807	3,584	27,312	16,096	4,994	796	7,898	7,602
1957-8		38.1%	13.9%	20.5%	8.4%	4.6%	16.8%	23.3%	6.8%	13.4%
		38,133	3,529	922	3,134	927	996	258	662	1,395
		61,866	21,716	3,565	33,742	18,926	4,909	847	8,752	8,971
1959-0		41.8%	13.7%	20.0%	7.7%	4.4%	17.6%	27.0%	6.7%	12.4%
		39,823	3,787	914	3,399	1,050	1,098	285	695	1,526
		55,249	23,838	3,651	40,613	22,338	5,129	767	9,625	10,761
1961-2		44.8%	13.5%	20.7%	7.0%	3.6%	21.4%	29.5%	6.5%	10.4%
		44,444	4,008	893	3,626	1,047	1,413	314	735	1,604
		54,750	25,558	3,419	48,124	27,985	5,178	748	10,414	13,691
1963-4		48.6%	12.5%	21.0%	5.9%	3.5%	22.5%	29.2%	6.1%	9.6%
		51,738	4,030	914	3,706	1,153	1,418	344	768	1,739
		54,658	28,122	3,436	58,141	31,301	4,874	831	11,822	16,244

1965-6	56.0%	11.5%	**	5.0%	3.5%	24.6%	32.8%	5.7%	**
	61,717	4,028	**	3,819	1,422	1,434	359	779	**
	46,492	30,824	**	72,281	38,132	4,393	733	12,787	**
1967-8	61.8%	11.3%	51.7%	5.5%	3.5%	22.0%	**	5.4%	7.4%
	68,721	3,842	2,038	4,293	1,425	1,224	**	808	1,733
	42,506	30,305	1,901	73,674	39,493	4,324	**	14,257	21,743
1969-0	68.7%	10.3%	64.1%	6.5%	3.4%	21.0%	29.5%	4.6%	5.8%
	72,523	3,604	2,729	5,640	1,556	1,224	329	796	1,585
	33,046	31,260	1,525	80,219	42,948	4,511	786	16,446	25,311
1971-2	72.2%	10.0%	67.8%	7.6%	2.9%	20.5%	29.7%	4.1%	5.3%
	72,318	3,510	2,804	6,638	1,372	1,113	350	760	1,454
	27,849	31,573	1,322	80,774	44,411	4,306	828	17,870	25,692
1972-3	77.0%	8.9%	70.0%	10.0%	2.8%	22.[illegible]%	30.0%	3.8%	5.0%
	73,985	3,560	2,767	8,308	1,295	1,135	346	743	1,437
	22,021	31,024	1,179	77,811	45,748	3,963	811	19,965	28,089

*Buford System not yet created.

**Data not available.

SOURCE: Data for 1951-54, Georgia State Board of Education Yearly Reports.
Data for 1965-72, HEW Regional Office, Civil Rights Division.
Data for 1965-66, City of Atlanta, Atlanta School System.

APPENDIX B

POPULATION IN ATLANTA SMSA[1] 1950-70

Jurisdiction	1950 Total Pop.	1950 % Black	1960 Total Pop.	1960 % Black	1970 Total Pop.	1970 % Black
Clayton County*	22,872	17%	46,365	10%	98,043	5%
Cobb County*	61,830	10%	114,174	7%	196,793	4%
DeKalb County*	136,395	11%	256,782	8%	415,387	14%
Fulton County*	473,572	31%	556,326	34%	607,592	39%
Gwinnett County*	32,320	10%	43,541	8%	72,349	5%
Atlanta[2]	331,314	37%	487,455	38%	496,973	51%
Buford	3,812	22%	4,168	24%	4,640	23%
Decatur	21,635	15%	22,026	14%	21,943	39%
Marietta	20,687	14%	25,565	14%	27,216	13%
METRO TOTAL	726,989	23%	1,017,188	22%	1,390,164	23%

*County data include cities; Metro total figure is total of county data and includes cities.

[1]Sources: U.S. Department of Commerce, Bureau of Census, Census of Population; 1950 (G.P.O. 1952); 1960 (G.P.O. 1961); 1970 (G.P.O. PC(1)-B48, Oct. 1971).

[2]Data for the City of Atlanta should be qualified: data for 1950 are for 1950 City limits, while data for 1960 and 1970 are for 1953 City limits. Corrected 1950 data are not applicable.

(Slip Opinion)

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 72-549 AND 72-550

School Board of the City of Richmond, Virginia, et al., Petitioners,
72-549 *v.*
State Board of Education of the Commonwealth of Virginia et al.

Carolyn Bradley et al., Petitioners,
72-550 *v.*
State Board of Education of the Commonwealth of Virginia et al.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May 21, 1973]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

MR. JUSTICE POWELL took no part in the consideration or decision of these cases.

Supreme Court, U. S.
FILED
JUN 15 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-550

CAROLYN BRADLEY, *et al.*,

Petitioners,

vs.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, *et al.*

PETITION FOR REHEARING

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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-550

CAROLYN BRADLEY, *et al.*,

Petitioners,

vs.

THE STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, *et al.*

PETITION FOR REHEARING

Carolyn Bradley, et al., petitioners in No. 72-550, respectfully pray the Court to grant rehearing in this cause, and in support thereof state as follows:

1. On May 21, 1973, four weeks after this case was argued, this Court affirmed the judgment of the Fourth Circuit by an equally divided vote. The practice of thus affirming decisions as to which the Court is evenly divided is of long standing, dating at least from *The Antelope*, 23 U.S. 66, 126-127 (1825). The cases resolved in this unusual manner have been few in number, rarely more than one or two a year when there was no vacancy on the court.[1] Although the subject matter involved in these cases

[1] There have been eleven such cases in the last five terms. *Bradley* v. *State Board of Education*, 41 U.S.L.W. 4685; *United States* v *First National Bancorporation*, 41 U.S.L.W. 4358 (1973); *United States* v. *Chas. Pfizer & Co. Inc.*, 404 U.S. 548 (1972); *Dewey* v. *Reynolds Metals Co.*, 402 U.S. 689 (1971); *Radich* v. *New York*, 401 U.S. 531 (1971); *Grove Press* v. *Maryland State Board of Censors*, 401 U.S. 480 (1971); *Decker* v. *Harper & Row*

has varied widely, certain common characteristics can be discerned.

First, these cases have generally presented a clearcut choice between two and only two alternative legal positions, with no middle ground for which a majority might be mustered. Thus in *Alitalia-Linee Aeree Italian* v. *Lisi* the Court divided over whether a printed warning on a baggage check constituted adequate notice of the limits on airline liability set by the Warsaw Convention. 390 U.S. 455; see 370 F.2d 508 (2nd Cir. 1966).

Second, a similarly clearcut dichotomy as to the relief to be granted or withheld has usually existed. In *Biggers* v. *Tennessee*, for example, the Court was forced to choose between affirming the petitioner's conviction and ordering a new trial. 390 U.S. 404.

Third, the affirmance invariably brought the particular litigation involved to an end, except where further relief was available in a subsequent habeas corpus action.

And the cases which the Court has permitted to be resolved in this way have generally involved legal questions of extremely limited applicability, *Decker* v. *Harper and Row Publishers*, 400 U.S. 348 (1971), or the sufficiency of evidence upon which a lower court decision was founded. *Anderson* v. *Johnson*, 390 U.S. 456 (1968).

Until now, the practice of this Court has been to abandon effort to overcome an even division only if the impasse would be particularly difficult to break, the affirmance

---

Publishers, 400 U.S. 348 (1971); *Atlantic City Electric Co.* v. *United States*, 400 U.S. 73 (1970); *In the Matter of Spencer*, 397 U.S. 817 (1970); *Standard Industries, Inc.* v. *Tigret Industries, Inc.*, 397 U.S. 586 (1970); *Du Vernay* v. *United States*, 394 U.S. 309 (1969).

finally resolves the dispute between the litigants, and the result does not leave lower courts hearing similar litigation hopelessly without guidance. The Court's resolution of the instant case, however, partakes of none of these characteristics.

2. This case is not one which requires the Court to choose between two and only two legal theories whose rationales and practical consequences are drastically different. The Court is offered a broad spectrum of positions to choose among in deciding the central problem at issue —when district courts have the power to cross school district lines to carry out the commands of *Brown*. The District Court and the Court of Appeals are, to be sure, at opposite ends of the spectrum, but this Court could properly adopt some intermediate position.

The wide variety of factors which the parties have advanced and bearing on the propriety of the relief awarded by the District Court are too numerous to recite in full. At least six major and distinct general theories have been offered as to the circumstances under which district courts have the power to cross district lines:

(a) Never, because of the Tenth Amendment.

(b) When the district lines were created or maintained with the purpose of discriminating on the basis of race.

(c) When different proportions of black and white children on either side of the line are the result of discriminatory state action in housing, zoning, school construction, etc.

(d) When one or all of the school districts involved are operating a dual system, and metropolitan

relief is necessary to avoid perpetuating that system, e.g., because of white flight.

(e) When the school district lines have been crossed with official sanction for other purposes, especially if the purposes included maintaining segregation.

(f) When there are substantially different proportions of black and white children in various districts, all of which are part of a single metropolitan area.

Petitioners submit it is unlikely that, upon rehearing, the Court would be equally divided on all or even most of these standards. If, as is of course possible, the Court can agree as to the circumstances under which district lines may be crossed, but is evenly divided as to whether those circumstances are present in this case, two alternatives would remain, both preferable to the instant impasse: The Court could remand to the District Court for further hearings, on the ground that the parties had not fully developed the relevant evidence or that the District Court had not made adequate findings. *Dyson* v. *Stein*, 401 U.S. 200, 203 (1971); *Byrne* v. *Karalexis*, 401 U.S. 216, 220 (1971). Or, as was done in *The Antelope*, 23 U.S. 66, 126-27 (1825), the Court could confirm this judgment by an equal division, but articulate for the guidance of future litigation in this and other cases the circumstances under which school district lines might be disregarded.

3. Nor is this a case in which the Court must simply choose between the merger relief ordered by the District Court and the erection of an impenetrable barrier to black children at the city line.

Merger of the three school districts is, to be sure, the method preferred by the Richmond School Board to finally

dismantle the dual school system in Richmond and the surrounding counties. But other possible solutions, with differing practical effects and effectiveness, are available for consideration. The three school boards might be permitted to operate their own school systems, but be directed to exchange a fixed number of students from specified schools. The boards could be required to permit and encourage majority to minority transfers across district lines. White parents who seek to flee the unitary system in Richmond by moving to the suburbs might be required to continue to send their children to the city schools for a specified period of time. Or students living near the boundary line between city and county might be directed to attend the nearest school regardless of whether they had to cross that boundary en route. Merger of the school districts is not itself a single alternative; the terms and conditions of the merger ordered by the District Court in this case might themselves be modified in any one of numerous respects.

It is difficult to believe that, after further deliberation, at least one remedy could not be found, among these or others devised by the Court, on which five members of the Court could concur. Nor is it even necessary that a majority agree that a particular form of relief is required in this case; the Court could rule which remedies were and were not permissible, and remand to the District Court to decide on the best of the available alternatives.

4. Review by writ of certiorari was sought in this case and in No. 72-549 because the decision below is in conflict with decisions of this and lower courts, and because of the need for guidance from this Court in a large number of pending metropolitan desegregation cases. Petition for Writ of Certiorari in No. 72-550, pp. 64-88; Petition for Writ of Certiorari in No. 72-549, pp. 38-40 and 48-52. The

same factors which prompted the Court to grant the writs require that the Court make every effort to answer the questions raised by this case.

Litigation seeking desegregation across district lines such as that at issue in this case is now pending in numerous cities. Petition for Writ of Certiorari in No. 72-550, pp. 64-66. The plethora of unanswered questions which must now be confronted in these cases is plainly indicated by the plethora of theories and remedies noted above. Only this Court, as the ultimate expositor of how the commands of *Brown* are to be met, can bring clarity and uniformity into this confused but terribly important area. Three years ago the Chief Justice recognized the need for guidance on this subject when he wrote "[a]s soon as possible . . . we ought to resolve some of the basic practical problems when they are appropriately presented including . . . to what extent school districts and zones may or must be altered as a constitutional matter. . . ." *Northcross* v. *Board of Education*, 397 U.S. 232, 237 (1970) (concurring opinion).

In the past this Court has restricted affirmances by equally divided votes to cases which did *not* involve questions of great public impact necessarily affecting much pending litigation. A prompt resolution of the questions posed by the Chief Justice in *Northcross* and appropriately presented here is vital to the education of countless black children. Those questions should be resolved in this case.

The decision of the Fourth Circuit appears to hold that school district lines may only be altered or crossed if those lines were established or maintained to perpetuate segregation. This position accords fully with that taken earlier by the Fourth Circuit in *United States* v. *Scotland Neck City Board of Education*, 442 F.2d 575 (1971) and *Wright* v. *Council of the City of Emporia*, 442 F.2d 570 (1971).

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However, two weeks *after* the Fourth Circuit's decision in the instant case, both *Scotland Neck* and *Emporia* were reversed by this Court, all of whose members agreed that the purpose of the district lines was irrelevant if they had the effect of impeding the dismantling of a dual system. 33 L.ed. 2d 51 and 75.

Prior to this case it had been thought clear that state action denies the equal protection of the laws whenever, regardless of its purpose, it has the effect of disabling blacks in the full enjoyment of their rights as American citizens. This unresolved conflict between the Fourth Circuit's and this Court's opinions, fraught as it is with tremendous consequences for all litigation under the Fourteenth Amendment, can be resolved only by this Court.

Two days prior to the filing of this Petition, the Sixth Circuit issued an opinion regarding inter-district relief in *Bradley* v. *Milliken* (No. 72-1809). Although counsel have not seen the opinion in that case, they are advised that the Sixth Circuit upheld the power of the district court to cross school district lines, but remanded for additional hearings. Under such circumstances *Bradley* v. *Milliken* would not be ripe for review by this Court, but the action of the Sixth Circuit demonstrates the need for a definitive resolution of the questions presented in the instant case.

5. Under the present circumstances, an affirmance by an equally divided court would represent, not an end to the present case, but the beginning of a new and unavoidably confused round of litigation.

The responsibilities of district courts in cases arising under *Brown* do not end when a desegregation plan acceptable on its face has been adopted and approved on appeal. Rather, *Brown II* contemplates that jurisdiction will be retained to assure that the goal of a unitary school system is rapidly and finally achieved. *Raney* v. *Board of Educa-*

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tion, 391 U.S. 443 (1968). The only plan now in effect in this case is that approved on April 5, 1971 regarding the assignment of students within the City of Richmond. 325 F. Supp. 828. The Court of Appeals appears to have concluded that, as of January, 1972, when the District Court approved the metropolitan area desegregation plan, the plan of April 5, 1971 was still adequate. Over two years have now passed since any hearing on the adequacy and effectiveness of the April 1971 plan.

On remand of the instant case, at least in its present posture, the adequacy and effectiveness of the April 1971 plan must again be reviewed by the District Court. In disapproving the District Court's plan the Fourth Circuit laid heavy emphasis on its conclusion that no substantial evidence had been adduced that white students were fleeing the predominantly black schools of Richmond to the overwhelmingly white schools of Henrico and Chesterfield Counties. The evidence relied on by the Fourth Circuit dealt primarily with the presence of former Richmond students in Henrico and Chesterfield County Schools in the 1970-71 school year, before the April 1971 plan was put into operation. On remand the District Court will have to consider whether developments *since* January, 1972 reveal that the plan of April 1971 is not leading to a unitary system because white parents in Richmond are moving to the all-white school districts or because white parents moving into the Richmond area are choosing to reside in Henrico and Chesterfield Counties to avoid sending their children to integrated schools.

Once the District Court makes such a finding regarding the effectiveness of the April, 1971 plan, it will find itself in the same quandary posed to all other lower courts by a 4-4 affirmance. Although the Fourth Circuit's judgment disapproving the plan of January, 1972, would stand, the reasons given by the Fourth Circuit are not binding as the law of the case. *Compare Biggers* v. *Tennessee,* 409

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S. 188 (1972). The District Court will have no guidance to how the Fourth Circuit's 1972 decision will ultimately reconciled with *Emporia* and *Scotland Neck*. Only this urt will be able to finally resolve any litigation arising m white flight. It is far better to resolve those questions e and now than to force petitioners in a case already years old to begin anew in the District Court.

. Because of the timing of the Fourth Circuit's deci-n, this case was virtually the last argued in the 1972 m. Four weeks after argument the Court apparently ıcluded it could not resolve the even division it then ed, and affirmed the decision below accordingly. The urt may of course have been concerned with the desir-lity of resolving this case in time for the 1973-74 school ır.

Petitioners submit, in view of the difficulties which neces-ily ensue from a 4-4 affirmance in an unusual case such this, that it would be in the best interests of the parties l of the effective implementation of *Brown* for the urt to allow itself additional time to resolve the present oasse. In other cases where the Court was closely di-ed, it has labored for far longer than the 28 days in this e before permitting the litigation to be resolved by an al division. See, *e.g.*, *United States* v. *First National ncorporation*, 41 U.S.L.W. 4358 (1973) (134 days); *we Press* v. *Maryland State Board of Censors*, 401 U.S. (1970) (118 days). The Court has freely directed re-ument on its own motion in recent years,[2] preferring

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[2] The court ordered rehearings in at least eight cases arising he 1970 term. *United States* v. *Brewster* (No. 45) 404 U.S. 51 (1972); *S. & E. Contractors* v. *United States* (No. 88) U.S. 1035 (1972); *Argersinger* v. *Hamlin* (No. 5015) 404 999 (1971); *Kirby* v. *Illinois* (No. 5061) 404 U.S. 1055 '2); *Roe* v. *Wade* (No. 18) 41 U.S.L.W. 4213 (1973), *Doe* v. *on* (No. 40) 41 U.S.L.W. 4233 (1973); *United States* v. *Orito* . 69); *Miller* v. *California* (No. 73).

the wisdom of a decision slowly arrived at to the dispatch of one reached under the pressure of the imminent end of the term.

CONCLUSION

The petition for rehearing should be granted and the case set down for reargument.

Respectfully submitted,

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Certificate of Counsel

I hereby certify that this Petition is presented in good faith and not for delay.

.....

June 15, 1973

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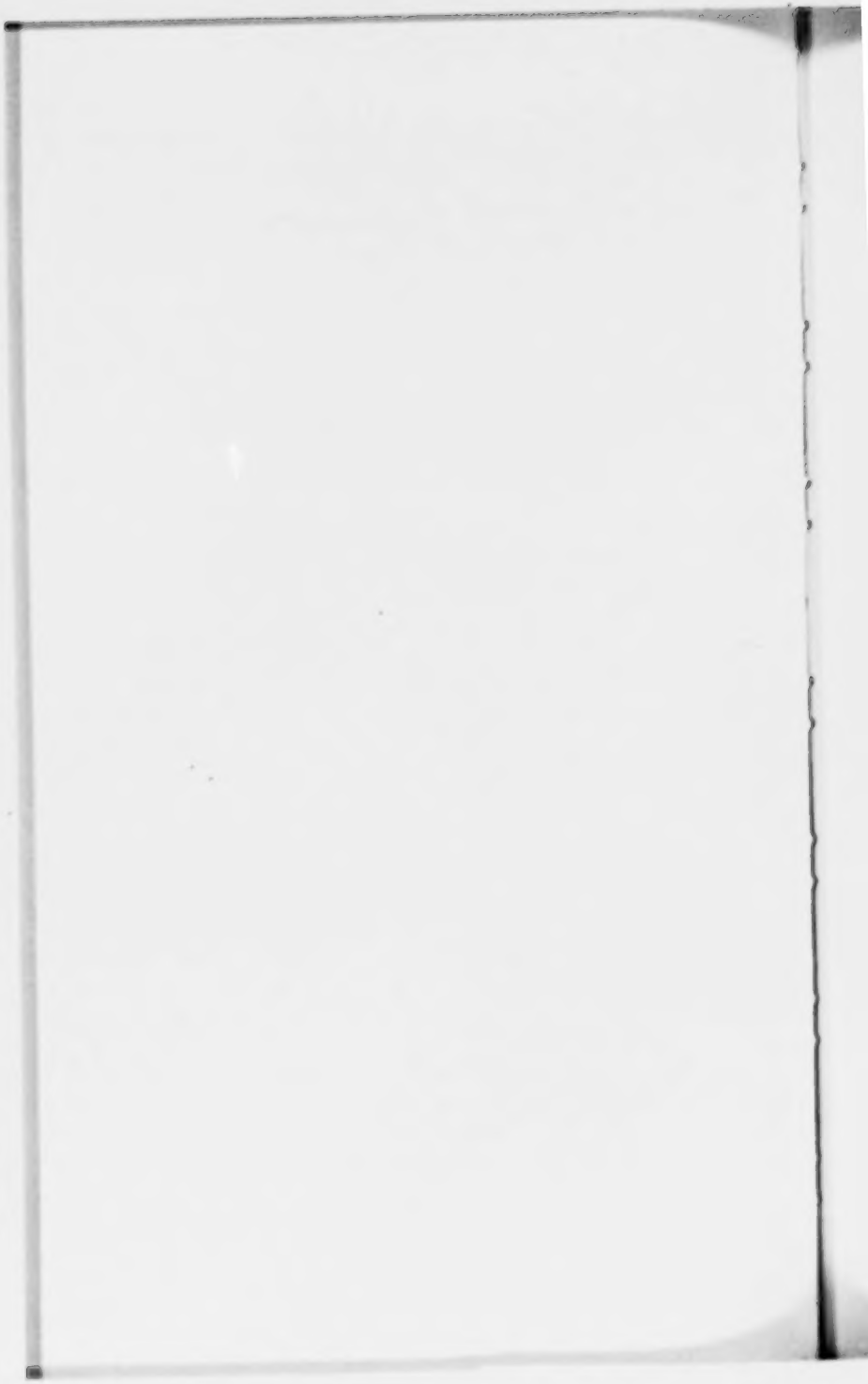

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In The

reme Court of the United States

October Term, 1972

No. 72-549

SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,

Petitioners,

v.

TATE BOARD OF EDUCATION OF THE OMMONWEALTH OF VIRGINIA, ET AL.,

Respondents.

WRIT OF CERTIORARI TO THE UNITED STATES OURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING OR REMAND

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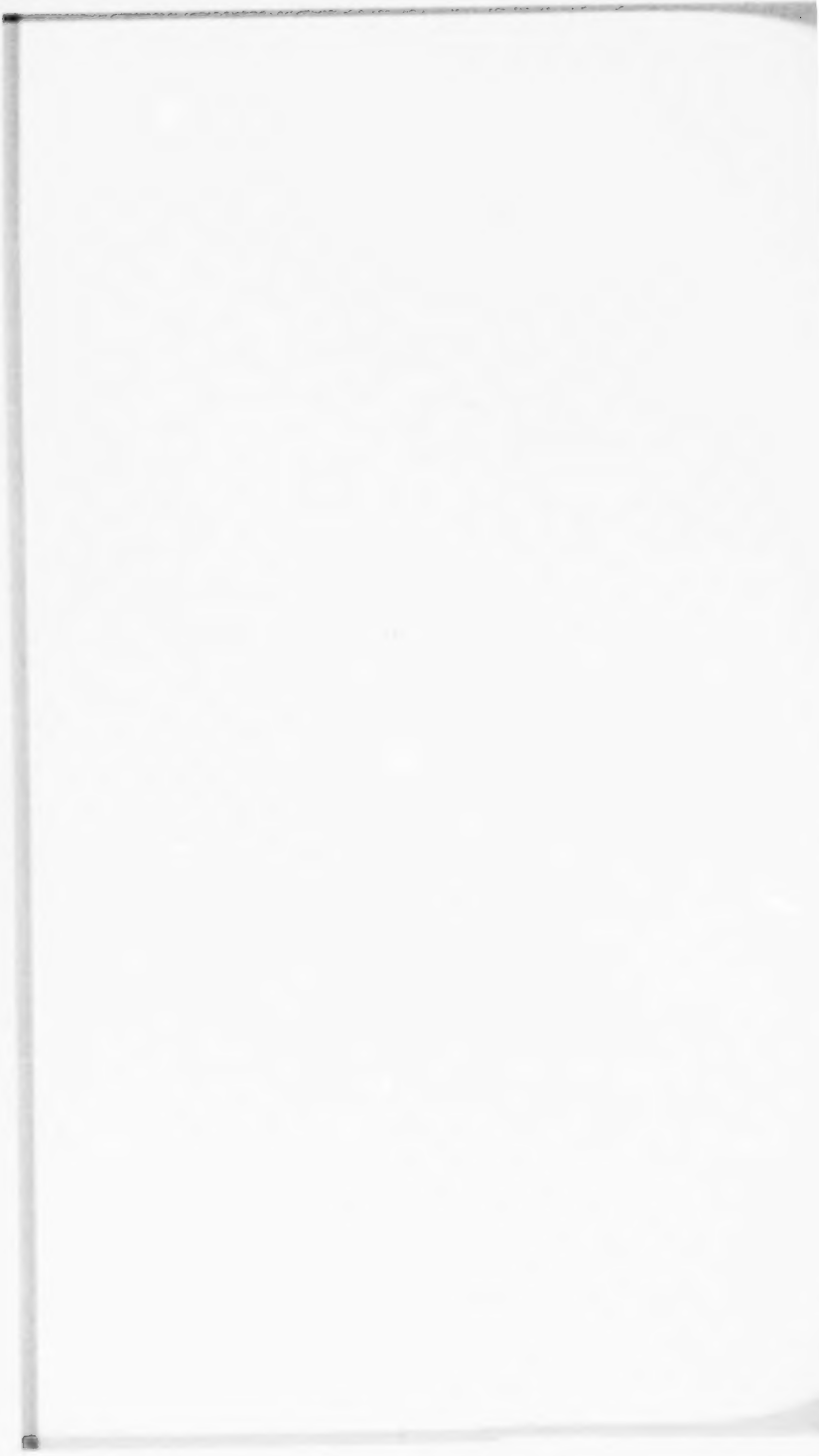

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In The

Supreme Court of the United States

October Term, 1972

No. 72-549

SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING OR REMAND

The Petitioners, the School Board of the City of Richmond, and the individual members thereof respectfully pray that the Court grant a rehearing in this cause or, in the alternative, modify its per curiam order of May 21, 1973, by directing that the case be remanded for consideration of certain critical issues presented by the record herein which have not previously been resolved by either the Court of Appeals or the District Court below.

This petition is timely filed in accordance with an order signed by Mr. Chief Justice Burger on June 18, 1973, extending the time for its filing to and including July 16, 1973.

INTRODUCTION

The reasons advanced in this request for a rehearing or, alternatively, for a remand, must be viewed in light of two factors: (1) the enormity of the effect of the affirmance by an equally divided Court; and (2) the resulting inexplicable inconsistencies which now envelop school desegregation guidelines. The Petitioners respectfully submit that these two considerations override the significant interest normally present in protecting the finality of this Court's actions particularly, where as here, only the procedural process of direct review has been concluded and no final adjudication on the merits of the issues presented has been made. *Neil* v. *Biggers*, ... U.S. ....., 93 S.Ct. 375, 378-79 (1972); *United States ex rel. Radich* v. *Criminal Ct. of City of New York*, 459 F.2d 745, 750-51 (2d Cir. 1972), *cert. denied*, ... U.S. ....., 93 S.Ct. 893 (1973).

A.

The Practical And Realistic Effect Of The 4-4 Affirmance

The Richmond School Board cannot accept any characterization of this Court's action as its first calculated retreat in almost twenty years from the consistent and diligent protection of black school children from the forces and effects of pervasive and invidious discrimination. Nor can the School Board believe that this Court's action represented a conscious reversal of the unanimous view of a total of 16 Supreme Court Justices both as to the inherent inequality of all-black schools[1] and as to the constitutional imperative

[1] Brown v. Board of Educ., 347 U.S. 483, 495 (1954).

hat both the existence and vestiges of such schools be liminated to the extent feasible.[2] Indeed, the rationale xpressed by this Court in its most recent opinion dealing ith school desegregation, *Keyes* v. *School District No. 1,* .... U.S. ....., 41 U.S.L.W. 5002 (June 21, 1973), indicates hat this faith is well founded.

Yet, even assuming as we must that other considerations d to the equal division in this Court, the practical and ndeed calamitous effect thereof is readily apparent to all. As ound by the District Court and unquestioned by the Court f Appeals, the present desegregation plan in Richmond ntained the seeds of its own frustration—a hastening of return to substantially all-black schools surrounded by eadily perceived white schools.[3] The Court of Appeals was f the view that the District Court's concern for effective elief led it to reversible error, and although acknowledging hat the evidence seemed to indicate the workability of the lan in practice,[4] accordingly set aside the relief decreed hich may reasonably be construed as having been intended preclude a return to the racially separate schools which his Court sought to eradicate with its decision in *Brown I.* But so much more is at stake than the equal educational pportunity for now and hereafter of black children in *ichmond.* The immeasurable impact on the substantial ajority of all black children in this nation is all too pre-ictable. Though blacks constitute but approximately 15 er cent of the total public school composition within this

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[2] Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15, -26 (1971).

[3] Bradley v. School Bd. of City of Richmond, 338 F. Supp. 67, 3-04 (E.D. Va. 1972).

[4] Bradley v. School Bd. of City of Richmond, 462 F.2d 1058, 1061, 64 (4th Cir. 1972).

country,[5] nearly 75 per cent of the black children live in metropolitan areas.[6] Save in fortuitous areas such as Charlotte-Mecklenburg County, North Carolina, where the predominantly black and poorer core city is part of a metropolitan school system encompassing the more affluent and substantially white suburbs, city black children will be locked into all-black school systems for the foreseeable future—an incomprehensible departure from the most elementary concepts of equal justice under law.

Surely our most rudimentary concepts of fair play and democratic ideals which underlay the decisions in *Brown I* and *II*[7] and the historic role of the judiciary in the vindication of constitutional deprivations compel the formulation of desegregation guidelines precluding the inevitable consequence of the present state of the law—the accomplishment of virtually complete segregation within most urban public school systems through the establishment of black schools in core-city areas. This likely eventuality no doubt has provided the impetus for the actions of district courts which in confronting this reality have construed previous remedial guidelines as clearly indicating that such a disastrous and unnecessary polarization of school children was constitutionally infirm.[8]

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[5] Bureau of Census, Department of Commerce, *General Social and Economic Characteristics PC(1)-A1, United States Summary* Table 74, p. 367 (Washington, D. C.: Government Printing Office, 1971).

[6] Bureau of Census, Department of Commerce, *General Population Characteristics PC(1)-B1, United States Summary* Table 67, pp. 324-33 (Washington, D. C.: Government Printing Office, 1971).

[7] Brown I, 347 U.S. at 495; Brown v. Board of Educ. (II), 349 U.S. 294, 298 (1955).

[8] Bradley, 338 F.Supp. 67; Bradley v. Milliken, No. 35257 (E.D. Mich. S.D., Mar. 28, 1972), *aff'd*, Nos. 72-1809, -1814 (6th Cir., June 12, 1973) slip opinion at 63-64, 80; *cf.* United States v. Board of School Comm'rs., 332 F.Supp. 655 (S.D. Ind. 1971), *aff'd*, 474 F.2d 81 (7th Cir. 1973).

B.

The Inconsistencies Now Enveloping School Desegregation Guidelines

As a result of this Court's per curiam affirmance of the Court of Appeals, city school boards committed to desegregation are confronted with a tragic dilemma in that previous experience flowing from the full utilization of established remedial directives[9] coupled with the crippling limitations on the power of district courts implicit in the 4-4 affirmance of the Court of Appeals foretells the retention of or return to all-black schools in those areas contiguous to readily accessible havens for whites. Even a cursory application of existing guidelines to the realities established by this record demonstrates the presence and scope of the irreconcilable inconsistencies with which district courts and school authorities must grapple pending further guidance from this Court.

The biracial Richmond School Board remains unanimous in its agreement with this Court's longstanding determination as to the inherent inequality of all-black schools in a biracial community,[10] its repeated assertions that the objective in all school desegregation cases is the elimination root and branch of all vestiges of a system of separate schools[11] and its placement of an affirmative obligation on all school authorities to take whatever steps are necessary to achieve the greatest possible degree of actual desegregation.[12] The Board similarly endorses the principle firmly established in

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[9] *E.g.*, Swann, *supra*; Green v. County School Bd., 391 U.S. 430 (1968).

[10] Brown I, *supra*.

[11] *E.g.*, Swann, 402 U.S. at 15; Green, 391 U.S. at 438-39.

[12] Swann, 402 U.S. at 26; Davis v. Board of School Comm'rs., 402 U.S. 33, 37 (1971).

Green, 391 U.S. at 439-40, that ineffective freedom-of-choice plans are not constitutionally viable and has accepted the uniformly applied standard that the fear of white flight or resegregation cannot be interposed as a justification for less effective plans of desegregation.[12] Its members have likewise accepted the indisputable reality that segregated housing patterns dictate the use of pupil transportation which is not only a reasonable but an essential tool of desegregation. Nor do they dispute the historical wisdom inherent in this Court's delineation of the remedial powers of district courts as requiring full consideration of *all* options and alternatives in the achievement of effective desegregation, and to the extent feasible, the prevention of the reoccurrence of the very segregation sought to be eliminated.[14]

All of these unequivocal pronouncements by this and other courts have been shrouded in the admonitions that "effectiveness" is the key—that the invidious effects of segregation must cease to exist in an *objective* sense—and that this Court is interested not in semantics or technicalities but in substantive realities.[15]

In light of this Court's per curiam opinion affirming the decision of the Court of Appeals, however, a moment's reflection reveals the staggering confusion which now abounds in the hearts and minds of those who have adhered to these tenets and have persevered in their application. Guidelines for urban school desegregation are now encumbered by the following irreconcilable inconsistencies the magnitude of

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[12] *E.g.*, Monroe v. Board of Comm'rs., 391 U.S. 450, 459 (1968).

[14] *E.g.*, Green, 391 U.S. at 438 n. 4, 439.

[15] Davis, 402 U.S. at 37; Wright v. Council of City of Emporia, ___ U.S. ___, 92 S.Ct. 2196, 2203 (1972); *Id.* 92 S.Ct. at 2208 (dissenting opinion), *citing* Green, *supra*; Swann, 402 U.S. at 31.

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which, we respectfully submit, compels early and effective resolution:

1. How does one equate the repeated admonitions that school authorities and district courts have the duty to select the alternative holding the greatest promise of effectively removing all vestiges of a system of dual schools in the context of the substantive realities before the court *with* the seeming disregard of extensive findings that the children of Richmond, Henrico and Chesterfield live in one community and that the city-only plan has served only to create readily perceived black schools in the City and white schools in the Counties? Prior to the 4-4 affirmance of this case, it was reasonable to assume that the only limitation on this required judicial appraisal was the availability of alternatives found to be feasible, reasonable and educationally sound. In view of the implicit rejection of such alternatives in this case, however, district courts and school authorities can only speculate as to what other, if any, limitations might be forthcoming and, indeed, even as to the ultimate objective ought to be attained in a city-only plan of desegregation.

2. The traditional principle that equity decrees should be designed to preclude the reoccurrence of the evils sought to be eradicated cannot be squared with the plethora of evidence and findings that the continued operation of the Richmond schools under a city-only plan is an exercise in futility in the face of obviously more effective alternatives.

3. The rejection by this Court of the relevancy of the "dominant purpose" test in cases involving the alteration of school system boundaries, *Wright* v. *Council of City of Emporia*, ... U.S. ....., 92 S.Ct. 2196, 2203 (1972), is difficult to reconcile with its affirmance of a decision embodying

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the identical standard in determining the sanctity of existing school division lines.

4. The affirmance of a decision embracing a "dominant purpose" standard in adjudging the validity of either the establishment or *maintenance* of school division lines would appear to ignore the explicit and well supported findings by the District Court that the continued maintenance of such lines was in part racially motivated (*e.g.*, 338 F. Supp. at 100-01). The question remains unanswered as to why on this record the requested relief is not supportable even under this overly restrictive test espoused by the Court of Appeals.

5. The justification for the implicit sanctification of existing school division lines is difficult to perceive in view of irrefutable proof of the involuntary assignment and transportation of thousands of black students across existing school division lines for the sole purpose of perpetuating segregation for almost two decades after *Brown I*. Equally puzzling is the rejection of a method utilized to defy this court as an acceptable means of creating "just schools" in the Richmond community.

6. Though fully subscribing to the recognition in *Swann*, 402 U.S. at 29-31, of the practical necessity of extensive transportation as affording the only means of providing an effective remedy in the context of Charlotte-Mecklenburg, one can not but question the soundness of its utilization in the Richmond context where at best it has served to create only momentary biracial schools at the price of greatly accelerating, self-defeating resegregation. In view of the fact that many of the students involved here live closer to schools in adjoining school divisions than to those they are presently attending, equally perplexing is the rejection of the transportation of pupils across existing school division

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lines where the record clearly demonstrates that a greater degree of actual desegregation can be attained even if such transportation were limited to a prescribed time or distance.

7. The duty of school authorities and district courts to consider *all* options and alternatives judicially determined to be feasible has been greatly limited by the implicit rejection of legislatively conceived plans for merger of or contractual interchange of pupils between existing school divisions as appropriate remedial devices, as well as by the apparent irrelevancy of findings clearly establishing both state encouragement and extensive current utilization by the three school systems involved of contractual pupil exchanges for all educational purposes save desegregation.

8. The affirmative duty of school authorities to take whatever steps might be necessary to remove all vestiges of state imposed segregation to the extent feasible and to promote the greatest degree of actual desegregation has been substantially eviscerated by the severe limitations which now effectively preclude a district court from utilizing its discretionary powers to order school authorities to exercise powers presently possessed under state law.

The national importance of the issues, we respectfully submit, requires a definitive resolution of these dichotomies at the earliest practicable date. Fortunately, even at this stage of litigation the judicial process affords avenues to eliminate or minimize the effects of such a quandary—further utilization of the full measure of the deliberative process of this Court in the hope of producing substantive finality as to the issues which presently divide it, or if this impasse cannot be resolved, a remand either for further consideration of critical issues left undecided or for lower court factual determinations which could assist this Court in providing the needed direction.

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As specific grounds for the petition for rehearing or remand, the School Board shows as follows:

I.

A Rehearing Should Be Granted In View Of A Conflicting Appellate Decision Which May Be Expected To Produce The Definitive Resolution Lacking In This Case.

A case involving legal issues substantially similar with those left unanswered by this Court's equal division, concerning the schools in the Detroit, Michigan metropolitan area, was decided by the full United States Court of Appeals for the Sixth Circuit on June 12, 1973. *Bradley* v. *Milliken*, Nos. 72-1809, -1814 (6th Cir.). Though the two cases are in some respects distinguishable both factually and from the standpoint of present legal posture, the divergence of rationale employed by the two Courts of Appeals in defining the scope of remedial powers of district courts fashioning relief in overwhelmingly black city school systems is unmistakably demonstrated by the following quotations from the Sixth Circuit's opinion:

> Like the District Judge, we see no validity to an argument which asserts that the constitutional right to equality before the law is hemmed in by the boundaries of a school district.
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> * * *
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> . . . [T]he record establishes that the State has committed de jure acts of segregation and that the State controls the instrumentalities whose action is necessary to remedy the harmful effects of the State acts. There can be little doubt that a federal court has both the power and the duty to effect a feasible desegregation plan. Indeed such is the essence of *Brown II*. . . . In the instant case the only feasible desegregation plan involves the crossing of the boundary lines between the Detroit School District and adjacent or nearby

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school districts for the limited purpose of providing an effective desegregation plan. The power to disregard such artificial barriers is all the more clear where, as here, the State has been guilty of discrimination which had the effect of creating and maintaining racial segregation along school district lines. [citations omitted.]

There exists, however, an even more compelling basis for the District Court's crossing artificial boundary lines to cure the State's constitutional violations. The instant case calls up haunting memories of the now long overruled and discredited "separate but equal doctrine" of *Plessy* v. *Ferguson*, 163 U.S. 537 (1896). If we hold that school district boundaries are absolute barriers to a Detroit school desegregation plan, we would be opening a way to nullify *Brown* [I] which overruled *Plessy*, *supra*.

This court in considering this record finds it impossible to declare "clearly erroneous" the District Judge's conclusion that any Detroit only desegregation plan will lead directly to a single segregated Detroit school district overwhelmingly black in all of its schools, surrounded by a ring of suburbs and suburban school districts overwhelmingly white in composition in a State in which the racial composition is 87 per cent white and 13 per cent black.

. . . Under this record a remedial order of a court of equity which left the Detroit school system overwhelmingly black (for the foreseeable future) surrounded by suburban school systems overwhelmingly white cannot correct the constitutional violations herein found.

Bradley v. *Milliken*, *supra*, slip opinion at 56, 63-64.

Owing to this patent conflict between the Circuits, wisdom would seem to dictate that the matter be finally resolved in the broader context which would be afforded by this Court's simultaneous review of both cases. Further-

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more, a conclusive adjudication on the merits of these issues is even the more likely in view of the probable participation in *Bradley* v. *Milliken* of the one Justice who took no part in this case.

Thus, the realistic expectancy of a substantive ruling by this Court militates strongly in favor of granting this petition or, at the very least, holding it in abeyance pending the ultimate resolution of the issues as presented in *Bradley* v. *Milliken*. The latter procedure was utilized by this Court in *Forgett* v. *United States*, 383 U.S. 926 (1966), 390 U.S. 203 (1968), where a petition for rehearing was held for nearly two years pending the outcome of closely related cases which were before it on the merits.

II.

A Rehearing Would Be The Appropriate Means Of Affording This Court Adequate Time To Conclusively Resolve Questions Of Immense Significance.

This case was heard very late in the Term (April 23, 1973) and was within four cases of being last on the Court's calendar. The relative dispatch within which this Court's per curiam affirmance was rendered and indeed, the lack of any formal opinion owing to the equal division among the Justices, indicates little occasion for the customary detailed study and circulation of opinions.

The foregoing circumstances are not without significance. There may well have been a greater chance of securing a majority—and thus the urgently needed guidance—had the Court had more time for deliberation. As Mr. Justice Frankfurter remarked in dissenting from a denial of rehearing in *Burns* v. *Wilson*, 346 U.S. 844 (1953) (dissenting opinion), "[o]ne has a right to assume that there is greater likelihood of securing agreement of views for a Court opinion at the beginning than at the end of a term."

Id. Mr. Justice Jackson has remarked that "not infrequently the detailed study required to write an opinion, or the persuasiveness of an opinion or dissent, will lead to a change of a vote or even to a change of result." R. JACKSON, THE SUPREME COURT IN THE AMERICAN SYSTEM OF GOVERNMENT 15; *see generally* A. BICKEL, THE UNPUBLISHED OPINIONS OF MR. JUSTICE BRANDEIS (1957). Finally, in *Reid* v. *Covert,* 354 U.S. 1 (1957) (concurring opinion), Mr. Justice Harlan explained how the grant of a petition for rehearing had afforded an opportunity for a greater degree of reflection upon difficult issues involved than had been possible in the short interval between the argument and decision at the closing days of the previous Term. *Id.* at 65.

We respectfully submit that the reasoning of Justices Frankfurter, Jackson and Harlan is particularly applicable here in view of the relatively brief period of time within which this Court was asked to finally resolve issues of the utmost gravity relating to the future course of school desegregation in many of this nation's urban areas.

III.

In The Event The Equal Division Among The Justices Of This Court Remains Immutable, The Most Appropriate Disposition Would Be A Remand For A Consideration Of Critical Issues Left Undecided Or For Findings Which Could Facilitate A Conclusive Ruling On The Merits.

A number of important questions presented by the record in this case were left undecided by both the District Court and Court of Appeals below. Additionally, as discussed at pp. 5-9 *supra,* the equal division among the Justices of this Court raises crucial inconsistencies in the remedial guidelines for urban school desegregation. Hence, even if the division on this Court is incapable of resolution on the pres-

ent record, we respectfully submit that the case should be remanded for a detailed exploration of remedial possibilities less extensive than the sole device (consolidation of separate school districts) considered by the District Court and the Court of Appeals or for any additional matters which in the view of certain Justices might need clarification.

1. Although the methods of relief requested in the District Court included a contractual exchange of students between the three *existing* school divisions operated as separate entities (A. 107-08), that Court selected the technique embodying school division consolidation as proposed in the plan submitted by the School Board (338 F.Supp. at 244-48) and did not address itself to contractual interchange as a workable option or alternative. Accordingly, the Court of Appeals rejected only the proposed consolidation without considering the feasibility of the suggested contractual interchange[16] or any other remedial possibilities.

The School Board respectfully submits that the propriety of this alternative form of student assignment is thus still unsettled, and that this record demonstrates both its historic use to perpetuate segregation (338 F.Supp. at 83-84, 141-46, 159-61) and its current use by Richmond, Henrico and Chesterfield for valid educational purposes (A. 417-20). During 1970-71, for instance, more than 20,000 Richmond and Chesterfield students as well as 10,000 Henrico students attended the jointly operated Math-Science Center located in Henrico County (A. 419-20). Similarly day-to-day contractual interchanges occurred during the school year just ended at this facility as well as at a number of other special

[16] The Court of Appeals held only that the District Court had erroneously compelled the Commonwealth of Virginia *"to restructure its internal government"* for purposes of achieving racial balance in the public schools. 462 F.2d at 1060 (emphasis added).

purpose schools serving the three areas. This particular technique is fully authorized under the laws of Virginia,[17] and even the Respondents herein have referred to it as the preferred alternative (A. 1346-48).

Indeed, even if a remedy providing for contractual interchange were limited to plans requiring no increase in the present levels of transportation of the students affected, such a plan would result in a significantly greater degree of actual desegregation in view of the proximity of many of the black city and white county schools to the existing school division lines. At the very least, there should be a rational answer to the perplexing question as to why contractual interchanges are permissible and indeed encouraged for all valid educational purposes save desegregation.

Nor is the appropriate remedial device limited to a choice between the consolidation of school divisions or a planned contractual interchange of pupils between the separate systems. For instance, permitting majority to minority transfers from one division to another or requiring joint selection of sites and operation of *new* schools to ameliorate that degree of segregation and isolation which at present is inevitable are but two of many possible remedial approaches which warrant detailed scrutiny.

The orderly administration of justice dictates a strong preference for the exhaustion of all possible remedial devices in an effort to obtain a substantive decision on the present

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[17] *See, e.g.*, 5 Va. Code Ann., § 22-219 (Repl. Vol. 1973) (empowering school boards to make regulations for the admission of and tuition arrangements for pupils resident in other political subdivisions pursuant to contracts between the separate entities); 5 Va. Code Ann., § 22-99 (Repl. Vol. 1973) (authorizing contracts between separate political subdivisions for the furnishing of school facilities); 5 Va. Code Ann., § 22-7 (Repl. Vol. 1973) (authorizing the operation of joint schools by separate political subdivisions).

record rather than requiring the needless, time-consuming and costly development of a new one.[18]

2. If some of the Justices of this Court remain unpersuaded as to the lack of effectiveness of the plan of desegregation under which the Richmond schools are currently operating, then this case should be remanded with instructions that its evaluation in practice be continued. Such a practical assessment, in fact, remains an affirmative requirement unless this Court's explicit language in *Green*, 391 U.S. at 439, is to be ignored. It is submitted that clarification as to the nature of the District Court's jurisdiction in this case would be of particular assistance in alleviating at least some of the uncertainties presently prevailing.

3. This Court has clearly rejected the relevancy of any inquiry concerning purpose or motivation where an alteration of school boundaries has the *effect* of impeding the process of desegregation, *Emporia*, ... U.S. ....., 92 S.Ct. at 2203; therefore the basic question remains as to whether the same standard should be utilized in determining if a state may insist upon the continued maintenance of school boundaries where the effect likewise deters complete and effective school desegregation. The Court of Appeals, without the benefit of this Court's action in *Emporia*, relied on what may well have been an irrelevant or incorrect legal standard in reversing the District Court's decree (462 F.2d at 1064). Thus at the very least the case should be remanded to the Appeals Court with directions that it re-examine its holding in light of *Emporia*. A finding by that Court that the effect-oriented standard is controlling here could well lead to a different result. Alternatively, if the Court of

[18] This Court has on past occasions remanded cases for the resolution of issues left undecided by its prior orders. *See, e.g.*, Parks v. Simpson Timber Co., 389 U.S. 909 (1967); Union Trust Co. v. Eastern Air Lines, 350 U.S. 962 (1956).

peals should determine that it must adhere to "dominant rpose," then it should be instructed to consider the Dis-ct Court's findings regarding the racial motivation under-ng the continued maintenance of the school boundaries *g.*, 338 F.Supp. at 100-01). Through such a process, not ly might the present stalemate be eliminated, but also a eater degree of clarity produced as to the standards which e to be controlling in the vital area involving the future rse of urban school desegregation.

4. Finally, and perhaps most importantly, the case should remanded for a determination as to the continued vitality this Court's directives in *Green* and *Swann* as they per-n to a city school system which has been severely frus-ted in attempting to realize the objective sought to be ained.

While the School Board has endorsed and steadfastly nered to the directives expressed in *Green* and *Swann*, record herein graphically demonstrates the actuality of racial polarization which is occurring among the school stems in the Richmond metropolitan area. The Board has lized all tools to the maximum extent possible to insure greatest possible degree of actual desegregation within City school system; however, even though the Board nains committed to the principles of a fully desegregated ucation for its students, must it persist in utilizing de-es which are serving only to promote resegregation within City's boundaries? Such a requirement would appear to totally inconsistent with the familiar principle that equity l not compel the doing of a vain act. By continuing to rate the City school system under the type of desegre-ion plan required by *Green* and *Swann*, the Richmond nool Board is severely dismayed that, in the context of metropolitan area, it may well be hastening a return to same racial separation which flourished from the time

of *Brown I* to the time of the filing of the Motion for Further Relief in March, 1970.

This enigma is all the more baffling in light of the fact that in its present posture this case has the unique and dubious distinction of illustrating the rejection of an obviously more effective remedy found by a district court to have been a feasible method of assuring the vindication of a deliberately perpetuated denial of constitutional rights.

These circumstances, we respectfully submit, compel a remand for a determination as to whether the guidelines established by this Court should be modified to conform to the realities of the Richmond situation.

CONCLUSION

For the reasons and grounds set forth above, the Petitioners respectfully pray that this Court grant the petition for rehearing and either set the case down for reargument or hold it in abeyance until such time as conflicting decisions are finally and conclusively resolved. In the alternative, if the petition for rehearing be denied, it is respectfully requested that this Court modify its previous order by remanding the case to permit the resolution of the critical and perplexing issues set forth above.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

As counsel for the Petitioners, I hereby certify that this petition for rehearing is presented in good faith and not for delay.

/s/ GEORGE B. LITTLE
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July 13, 1973